RAILWAYS ACT, 1921.

PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

THE STANDARD TERMS AND CONDITIONS OF CARRIAGE.

CONDITIONS LETTERED "A."

MONDAY, MARCH 19TH, 1923.

FIRST DAY.

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PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

MONDAY, MARCH 19TH, 1923.

PRESENT:

W. B. CLODE, ESQ., K.C. (*President*).
W. A. JEPSON, ESQ.
GEO. C. LOCKET, ESQ., J.P.

FIRST DAY,

MR. BRUCE THOMAS and MR. A. TYLER appeared for the Railway Companies' Association.

MR. HOLMAN GREGORY, K.C., and MR. HAROLD RUSSELL (instructed by Messrs. Willis & Willis, Agents for Mr. H. J. Taynton, Gloucester) appeared for the Association of Private Owners of Railway Rolling Stock.

MR. JACQUES ABADY (instructed by Sir Thomas R. Ratcliffe-Ellis) appeared for the Mining Association of Great Britain.

MR. JACQUES ABADY (instructed by Messrs. Vizard, Oldham, Crowders & Cash) appeared for the Traders' Co-ordinating Committee.

MR. W. E. TYLDESLEY JONES, K.C., and MR. JACQUES ABADY (instructed by Messrs. Sharpe, Pritchard & Co.) appeared for the Railway Carriage & Wagon Builders' & Financiers' Parliamentary Association.

MR. EDWIN CLEMENTS (instructed by Messrs. Neish, Howell & Haldane) appeared for the National Association of British & Irish Millers, and others.

MR. EDWIN CLEMENTS (instructed by Mr. R. Borrough Hopkins, Leeds) appeared for the National Federation of Iron & Steel Manufacturers.

MR. CHARLES DOUGHTY and MR. R. T. MONIER-WILLIAMS (instructed by Mr. George Corner) appeared for the National Federation of Fruit and Potato Trades' Association (Incorporated), Ltd.

MR. R. T. MONIER-WILLIAMS (instructed by Messrs. Monier-Williams & Milroy) appeared for the Wine & Spirit Trades' Association.

Mr. R. W BRADLEY appeared for the Manchester Chamber of Commerce and the Trafford Park Traders' Association.

MR. J. COX appeared for Messrs. Ronuk, Ltd.

President: What is the order of procedure, Mr. Bruce Thomas? Are you going to introduce these terms and conditions and then we hear objections, or what will be the convenient way of dealing with it?

Mr. Bruce Thomas: What I was going to suggest, subject to the approval of the Court and to anything my friends may have to say upon it, was this, that I should go right through these conditions—because, after all, this Court has to settle them whether they are agreed or not—and explain them, not dealing in any particular detail with the opposed conditions, just indicating which are opposed and where a dispute arises, and then coming back and taking each contested condition separately, adding anything I may have to say upon the contested conditions, calling my evidence, and then hearing the Opponents; so that it will be recorded quite clearly on the proceedings what has taken place on each contested condition.

President: Mr. Holman Gregory, will that be convenient to you and the gentlemen on the other side?

Mr. Holman Gregory: I think it sounds a reasonable proposition, Sir.

Mr. Abady: If I might add to that just a detached point to get it out of the way: my friend has referred to the fact that a good many of the conditions have been agreed; of course that is so; I simply desire to make it clear to the Court, and I believe my friend will agree with me, that in coming to an agreement the parties must not be considered to have prejudiced in any way the right of traders to object to the like agreed conditions which it may be proposed to put in another note.

President: I understand we are only on A to-day?

Mr. Bruce Thomas: Yes.

President: Of course the Opponents will use their discretion how far any decision on A affects them in the future; but until we deal with the particular condition under the particular letter we cannot settle it.

Mr. Abady: That is so. But it is understood it applies only to note A?

President: Yes.

Mr. Monier-Williams: I appear on behalf of the National Federation of Fruit and Potato Trades' Association. There is one preliminary point I should like to have cleared up. My association on the 8th of July last wrote a letter addressed to the Chairman of the Railway Rates Tribunal, which letter might have had the effect of putting them in a slightly false position unless I make my position clear. In that letter they refer to the amendments to these conditions. Perhaps if Mr. Atkinson would put the letter before you, Sir, you will see exactly what the point is. It says: "Having considered the amendments to these conditions which are being presented on behalf of the Traders' Co-ordinating Committee, my Federation is satisfied with these amendments with the exception of one paragraph which occurs in two different conditions." Then they refer to some slight alterations.

President: That is on B?

Mr. Monier-Williams: Yes. The letter then goes on to say: "We, therefore, desire to withdraw the objections lodged by us on the 15th May last and adopt in their stead the whole of the amendments

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lodged by the Traders' Co-ordinating Committee, but with the qualification mentioned in the preceding paragraph." I did not appreciate that there might be any difficulty in my appearing here to-day until I had a conversation with Mr. Atkinson on the subject. As that letter stands, the objections of the Federation for which I appear have been withdrawn, and, therefore, the Tribunal, on the face of it, have nothing before them. But the situation is this, having considered the amendments as finally agreed between the Traders' Co-ordinating Committee and the railway companies, my Federation have been unable to see eye to eye with the Co-ordinating Committee on one or two of the conditions, and they have instructed me to come here to-day to put their point of view on those conditions before the Tribunal. I anticipate there will be no difficulty in my doing that.

President: No; we shall not take any technical objections, Mr. Monier-Williams; we shall hear you.

Mr. Monier-Williams: I am obliged to you, Sir.

Mr. Bruce Thomas: I appear, Sir, with my friend Mr. Tylor on behalf of the railway companies to present these conditions which are among the set of conditions which had to be lodged by the railway companies under Section 42 of the Railway Act within six months of the passing of that Act. That time was extended by this Court, and within the extended time conditions were duly lodged which are contained in this small blue book with which we are all familiar. Not only does the book contain the conditions which, I understand, we are going to deal with to-day, but it contains the conditions upon which it is proposed that practically all traffic will be carried in the future—merchandise, coal, livestock, and so forth. After those conditions had been lodged and, I believe, published, the railway companies and the Co-ordinating Committee, and, I think, other objectors who had lodged suggestions and counter-proposals, got together, and for very many months they have had meetings almost continuously and have been discussing these conditions that we propose, with the result that I think the bulk of the conditions have been agreed—that is, the bulk of the conditions relating to the carriage of merchandise by merchandise train at company's risk rates; the conditions we refer to as "A." The bulk of them have been agreed; and I think last week a new set of conditions was lodged with the tribunal, which set of conditions is contained in the large blue book; and this book shows to what extent the railway companies have been able to agree with the Traders' Co-ordinating Committee. The Traders' Co-ordinating Committee being the body that was, I think, informally set up, but very conveniently set up as representing, perhaps, the largest trading associations, or the bulk of the trading associations —and this document shows the agreements that have been come to with them. It also indicates the points where differences are outstanding, which differences we shall have to ask the Court to settle. This document after it had been printed was circulated among all the various bodies and the different persons who had originally objected to the conditions contained in the small book, so that they might have an opportunity of knowing how the matter now stood, and of seeing whether they were satisfied with the arrangements that had been come to between the companies and the Co-ordinating Committee, and, if not, to turn up here to-day and support the objections which they had originally lodged.

Mr. Abady: Is that to all objectors with respect to note A, or all the others?

Mr. Bruce Thomas: Only all the objectors to note A. Having made those preliminary remarks in order to try and show how the matter now stands, I think perhaps I had better go through the conditions and indicate as far as I can what they mean, where agreement has been come to, where certain points are outstanding, and then afterwards go back to the contested conditions and, if I have anything I wish to add upon the contested conditions perhaps I may be allowed to do so, and then call Mr. Pike, and then the objectors will be heard. I do not think there is anything that calls for particular comment in the heading of these conditions, although the heading has been the subject of discussion between the railway companies and the Traders' Co-ordinating Committee and is a slight variation from the heading as originally deposited. As originally deposited, the title read as follows: "The Standard Terms and Conditions of Carriage of Merchandise (other than Dangerous Goods and Merchandise for which Terms and Conditions are specially provided) when carried by Merchandise Train at Ordinary Rates." The only alteration that has been made is that in place of "ordinary rates" we have substituted, I think at the traders' suggestion, "Company's risk rates." The first Condition relates to the addressing and declaration of merchandise; and you will see that it provides that: "Every consignment of merchandise shall (except as otherwise agreed in writing) be addressed in accordance with the Company's Regulations settled by the Railway Rates Tribunal, and shall be accompanied by a consignment note on which shall be stated:—(*a*) The full names and addresses of the sender and the consignee." Under the existing law there is an obligation upon any person who hands goods to a railway company to state the place of despatch and also the place of destination. That is to be found in Section 98 of the Railway Clauses Act, 1845. The addition that has been made by the Condition to the provision which is contained in that section is that not only shall the place of despatch be given but the full names and addresses of the senders. The Condition goes on: "(*b*) The station or place of destination." That is the place of unloading, exactly what is provided for by Section 98 of the Railway Clauses Act of 1845. Then: "(*c*) Such particulars as the Company may reasonably require of the nature, weight (inclusive of packing) and number of the parcels, articles or merchandise handed to the Company for carriage to enable them to calculate the charges therefor." That, in substance, is stating what the law will be on the appointed day, under Section 98 of the Railway Clauses Act, 1845, as that section has been amended by the Sixth Schedule of the Railways Act of 1921. Section 98 of the Act of 1845 provides that a person handing goods to a railway company shall give an account in writing signed by him of the number or quantity of goods conveyed by any such carriage —the exact account of the number or quantity. The Sixth Schedule of the Railways Act of 1921 provides that the sender shall give an account in writing signed by him of the full name and address of the consignee, and such particulars of the nature, weight (inclusive of packing) and number of parcels, articles or merchandise handed to the Company for conveyance as may be necessary to enable the Company to calculate the charges therefor. You will therefore see that in paragraph (*c*) of Condition 1 we have in effect, if not in exact terms, stated what will be read into Section 98 of the Act of 1845 after the appointed day. Then paragraph (*d*) provides: "Whether (when the Company do not require repayment) the charges are to be paid by the sender or by the consignee," and (*e*) provides that where an arrangement has been made with the Company that the goods are "to wait order" then it must be so stated upon the note. That Condition is agreed so far. There is a question about a receipt, to which I will refer in a moment; but there is one matter I should like to draw attention to upon it. You will observe that in the Condition No. 1 as originally deposited it was provided that "every consignment of merchandise shall be fully and properly addressed." It was suggested by the traders that that was not entirely satisfactory and that something more definite might be put in than the words "fully and properly addressed"; so you will now see, Sir, that in the Condition as it stands, the provision is that "Every

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consignment of merchandise shall be addressed in accordance with the Company's Regulations settled by the Railway Rates Tribunal." I suppose that if the parties will try and arrange what the addressing regulations are to be, then we will come and ask the Tribunal to approve them. Thus far the Condition is agreed, but the Co-ordinating Committee on behalf of the bodies they represent ask that an addition should be made to the Condition providing that the Company shall give a receipt containing the above particulars—that is, particulars that have to be set out on the consignment note unless otherwise agreed. We object. We cannot agree to that. I do not propose to go into the reasons for the objection at the moment. I shall come back to that. There will have to be some discussion upon it, and perhaps it will be more convenient for me to state the reasons of our objections to that proposal later.

Coming now to Condition 2. That deals with the labelling of trucks at private sidings. It provides that: "Every truck loaded in a siding not belonging to the company shall (except as otherwise agreed in writing generally or in respect of a particular consignment) be labelled by the trader with two labels, which shall be securely affixed one on each side of the truck, and upon each such label shall be stated: (*a*) The name of the sender. (*b*) The name of the consignee (except where the truck is loaded with merchandise for more than one consignee)." I do not think that was the original proposal. However, that was a suggestion made by the traders, that where the truck contained merchandise for different consignees that condition ought not to be pressed for; and we agreed. "(*c*) The station or place of destination and, where such station or place is served by more than one company, the name of the delivering company." The original proposal was that they should state on the label the route by which the merchandise is to be conveyed. There might be some difficulty in a trader stating the route, but there is no difficulty in his stating the delivering company, and that has been substituted for the original suggestion with regard to the stating of the route. Then: "(*d*) The nature of the merchandise. (*e*) The actual weight, or where this is not practicable, the approximate weight of the merchandise inclusive of packing." Where you have a large consignment of, say, iron ore, it is not practicable to give the weight in the truck although the total weight of the consignment can be given and, approximately, therefore, the weights in each truck. Then: "(*f*) The name of the owner and number of the truck." That condition, as I think I have already stated, has been agreed by the Co-ordinating Committee; but the railway companies undertook, when that agreement was come to with the Co-ordinating Committee, that they would state before this Court that they have no information before them which leads them to contemplate any alteration in the existing practice in cases where trucks are labelled by railway companies on behalf of traders. A question arises upon this condition. It is raised, I think, by Messrs. Neish, Howell and Haldane on behalf of a number of trading bodies—on behalf of Messrs. Spillers and Bakers, and Messrs. Rank, and the National Association of British and Irish Millers. I think there is a question raised also upon this condition by the Glasgow Chamber of Commerce, by the Manchester Chamber of Commerce, and by the British Potteries Manufacturers' Federation. I think I have pointed out already that we are, of course, agreed with the Co-ordinating Committee, but these are people who do not see eye to eye with the Co-ordinating Committee upon this matter. As I understand it, the point is this. There are many cases where trucks are loaded upon private sidings where railway companies to-day do the labelling. They are under no obligation clearly, I think, to send their men on to a private siding to do anything for a trader there. A trader who has a private siding does his own loading, and the company have no right of interference; but, as a matter of convenience, not only to the traders, but to the railway companies, in many instances the railway companies' men do go on private sidings and label wagons which have been loaded by the private siding owner. The proposal, or the suggestion, which is made on behalf of the persons who do not see eye to eye with the Co-ordinating Committee on this matter, is that the railway companies should give an undertaking not to alter the existing practice, and go further and should come under an agreement not to alter it except upon giving six months' notice; and, even then, the railway company should come under an obligation to justify the withdrawal of the services that they perform to-day as being—I do not know upon what ground, but as being reasonable, I suppose. The railway companies are not ready to accede to that request, which is put forward on behalf of numerous bodies. We say that we are under no obligation to go on their sidings; that, so far as our information goes, there is nothing that leads them to contemplate any alteration in the existing practice in cases where trucks are labelled by railway companies to-day; and in order to try and meet these gentleman who are objecting, the London & North Western Railway Company has said—they, I think, were particularly addressed upon this subject on behalf of a considerable number of traders—that they would go further than I have gone in the statement I have made on behalf of all the Companies, and that they would not withdraw it without giving them three months' notice. I am now informed that all the other companies have given a similar reply; they have received similar letters from Messrs. Neish, Howell & Haldane, who are acting for all the persons who are objecting on this particular point. Further than that we cannot see our way to go, and we suggest that that is a very reasonale proposition.

Mr. Jepson: What does that lead to? I am assuming that the railway companies' men are being sent on to a private siding, not only for labelling, but for supervising, loading and other things. One knows that occurs. Does it mean that the railway companies claim that they can discontinue that practice by giving three months' notice, and that is the end of it? Supposing a trader objects—I suppose you would say that was the end of it so far as the railway company is concerned; they gave them notice, and at the expiration of the notice the practice was discontinued, and so far as the railway company goes that is the end of it. There is no question, if the trader objects or declines to accept the notice, of there being any appeal to this Tribunal, or anything of that kind?

Mr. Bruce Thomas: No. I imagine that this Tribunal would not have any jurisdiction in the matter. The traders might attempt to raise it elsewhere. I cannot see how they can raise it elsewhere, but they might be so advised, that it was a facility with the railway company to load traffic on private siding. I have never heard it suggested, but all sorts of things are suggested.

Mr. Jepson: I only wanted to know what was in the minds of the railway companies; whether when they have given such notice that is the end of it so far as they are concerned.

Mr. Bruce Thomas: Quite so. Of course, Mr. Jepson, we are only dealing with labelling. No question has ever been raised so far about withdrawing the service of loading which the railway companies may perform on private sidings. That question has never been discussed.

Mr. Jepson: But the same principle may arise?

Mr. Bruce Thomas: Yes; I think probably it would. Then I wanted to refer in connection with this question of loading to the Prevention of Accidents Act.

Mr. Jepson: The question of labelling?

Mr. Bruce Thomas: Yes. It is the Railway Employment (Prevention of Accidents) Act, 1900, and the Rules that were made by the Board of Trade under that Act. If you have a copy of Mr. Balfour Browne's book before you, you will see it referred to.

I think it is relevant when we are discussing this matter.

Mr. Abady: Here is a copy of the original Rules.

Mr. Jepson: It is No. 1 of the Prevention of Accidents Rules, 1902: "When it is necessary in the ordinary course of business that any label or direction as to destination or consignee shall be placed upon any wagon, the company on whose line of railway such wagon is about to be used shall see that such label or direction is placed on both sides of such wagon."

Mr. Bruce Thomas: That is it. The next paragraph is most important: "No railway company shall receive from any person for conveyance on its railway any wagon not labelled in accordance with this Rule." Then there is a provision that it is not to apply to mineral traffic. Upon that there is a clear duty upon whoever is handing the wagon to the railway company, or whoever is delivering, to see that the wagon is labelled. It is on them that the duty of labelling is put. There is, in fact, prohibition put upon the railway company against receiving any wagon on its railway which wagon has not been labelled in accordance with that rule. I have dealt, perhaps, a little more fully than I ought at this moment with that, but possibly these gentleman may reconsider their position and be satisfied with what I suggest is the very reasonable proposal that the railway companies have made.

Mr. Jepson: Upon Condition 2. I should like to mention one or two points which occur to me in reading through that Condition and which do not seem to be provided for. For instance, under (*b*), "The name of the consignee (except where the truck is loaded with merchandise for more than one consignee)"—what is proposed in cases like that? Is there to be simply the name of the station? How is the station agent in that case to know to whom he is to hand over the truck containing goods for several consignees?

Mr. Bruce Thomas: Under (*c*), even where the truck is loaded with merchandise for more than one consignee, the station or place of destination will have to be given, and the name of the delivering company.

Mr. Jepson: Yes. I was thinking, supposing a truck arrives at the station with simply the name of the station on and the delivering company, how is the agent to know whether he is to hand it over to Jones or to Robinson if the invoice has not arrived?

Mr. Bruce Thomas: There will be the invoice, which will show the names of the various consignees; and then there will be the contents, which will be labelled.

Mr. Jepson: But still it comes in as a full truckload from one consignor to several consignees at a station; and the railway company would, I suppose, have an obligation to hand it over to someone to whom it was addressed and not to let anyone go to that truck and pick out any goods, although they may be labelled to him. I do not want an answer now, but perhaps Mr. Pike will consider that and say something about it.

Mr. Locket: Would not that be governed by the consignment note?

Mr. Bruce Thomas: There will be a consignment note, and there will be an invoice which will be a repetition in another form of the information that is contained on the consignment note. That will be received at the delivering station by the agent or station master; he will see from the contents label, which I believe is put on the truck by the railway company, what is in the truck; and from his invoice he will see for whom the particular packages are intended.

Mr. Locket: In such a case as Mr. Jepson has outlined, where a truck is sent addressed to the station without the name of any consignee on the label, the station agent would wait for the receipt of the consignment note before handing over the goods, I imagine.

Mr. Bruce Thomas: I think he would have to.

Mr. Jepson: He would not, would he? The consignment note is not sent, is it; it is the invoice?

Mr. Locket: Yes, the invoice is made up on the consignment note.

Mr. Jepson: One knows in practice the invoices do not arrive for a considerable time after the trucks; they are not always attached to the vehicle. I was only wanting that point cleared up; I do not want an answer now, Mr. Thomas. The other point was this: Condition 2 seems to provide only for trucks loaded in sidings not belonging to the company. Where is provision made for trucks loaded on sidings belonging to the railway companies? It is a common practice for the traders to load on sidings belonging to the railway companies. Is that provided for in another Clause, or should it not be provided for here?

Mr. Bruce Thomas: There is no obligation to label sought to be put by these conditions upon the person who loads. The railway companies label in that case.

Mr. Locket: Are you making any reference to the date of the forwarding? In the original draft the label was to contain the date of the forwarding. You are omitting that now?

Mr. Bruce Thomas: The traders did not want it and we did not think it was necessary.

Mr. Locket: You did not require it?

Mr. Bruce Thomas: No. I will now go to Condition 3 which deals with the liability of the Company during transit. This is a very important Condition, and before I deal with it may I refer the Court to the third Conditiou of those which were originally deposited to show what a departure this Condition is from that? The original proposal of the companies was: "The Company shall not be liable for loss, damage, deviation, misconveyance, or misdelivery on proof that the same has not been caused by the neglect or default of the Compauy or their servants." Under the existing law—and, indeed, it has not been in any respect altered by the Railways Act of 1921 except in so far as authority is given to this Court to settle conditions of carriage—a railway company has always been entitled to limit its liabihty in any way it thought fit, provided only that it did not seek to limit its liability for its own negligent acts. If it sought to limit its liability for negligent acts, then it could only do so by a special contract made with the sender of the goods, the terms of which contract had to be reasonable and to be sigued by the person that the railway company intended to bind by that contract. That is shortly the effect of Section 7 of the Railway and Canal Traffic Act of 1854. But that section did not touch contracts which railway companies made when by those contracts they did not seek to absolve themselves from their negligent acts or the ueglgent acts of their servants. The proposal of the railway companies as originally put forward was not a proposal that they were entitled to make under the existing law; it did not go as far as that. Under the existiug law the railway companies could have said: "Now, we will not be liable for damage in transit unless you (the trader) prove that that damage has resulted from the railway companies' negligence."

President: You have shifted the onus by the Condition?

Mr. Bruce Thomas: Yes. In our proposal we put the onus on ourselves. We say we will not go as far as the law entitles us to go, but we will provide that we are not to be liable for goods that are damaged in transit, if we (the railway company) can prove that they were not damaged through our fault. That was the proposal we made, and we thought it a fair and reasonable proposal; because the days when it is necessary in the public interest that a common carrier should be an insurer I suggest have gone by. That, of course, called forth very considerable discussion; and I do not know how many hours, or even how many days, have been spent upon this Condition No. 3, but it was a very very long time, and I am sure this Court will

be grateful that it will not be called upon to spend anything like that amount of time on it now.

President: It seems to me a great concession on the part of the railway companies.

Mr. Bruce Thomas: Yes, I think it is, if you judge their position by what they were entitled to impose as the law stands.

President: Under the Act of 1854?

Mr. Bruce Thomas: Yes, under the Act of 1854. Condition 3 now instead of dealing in a negative way with the companies' liability sets out affirmatively what their liability is to be; and because it is set out in that affirmative way it becomes necessary in other Conditions to make provision which is nothing more than a statement of the existing law, but it becomes necessary in our view that these statements of the existing law should be made because of the affirmative form in which this Condition has been set out. I shall probably have to say something more upon that when I come to those statements of what we consider to be the existing law. The third Condition reads as follows: "The Company shall subject to these Conditions"—that being, of course, to the exceptions contained later—"be liable for any loss, or mis-delivery of or damage to merchandise occasioned during transit, as defined by these Conditions, unless the company shall prove that such loss, misdelivery or damage has arisen from"—then follow certain acts. So that you will see that, in the opening four lines, an unrestricted liability is placed upon the company for loss, misdelivery, or damage during transit. Then come the limitations. Unless the company shall prove that the loss has arisen from, "(*a*) Act of God; (*b*) Act of war or of the King's enemies; (*c*) Arrest or restraint of Princes, or Rulers, or seizure under legal process; (*d*) Orders or restrictions imposed by the Government or any Department thereof; (*e*) Act or omission of the trader, his servant, or agent; (*f*) Inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the merchandise." So far, I think I am correct when I say that that was the position of a common carrier at common law; but here we have set out specifically particular matters in respect of which he would not have been liable. But there is this addition: "(*g*) Casualty"—the company are not to be liable for loss during transit if the company shall prove that that loss has arisen from casualty, which, among other things, is specifically stated to include fire or explosion. Then we come to the proviso which, of course, is most important when we are considering that casualty, and, indeed, the other matters: "Provided that: (*i*) Where loss, misdelivery or damage arises and the company have failed to prove that they used all reasonable foresight and care in the carriage of the merchandise, the company shall not be relieved from liability for such loss, misdelivery, or damage." There you will observe that we are taking in one respect a bigger liability than a common carrier has ever had before. Take inherent defect or latent defect. It will not be sufficient for a railway company merely to prove inherent defect, but they will have to go further and show that they have used all reasonable foresight in the care of those goods. The traders pressed for that very much, and we have conceded it; we have taken that obligation upon ourselves. On the other hand, we are to be excused when damage is done in transit due to casualty, to an accident. That means, of course, an accident that we could not have avoided by all reasonable foresight and care. That has to a large extent met the proposal we originally put forward in Condition 3 as it is printed in the small blue book. It has been the subject-matter of very long discussion, and as it stands I am glad to say it is agreed. Then there is a proviso that "The company shall not incur liability of any kind in respect of merchandise where there has been fraud on the part of the trader"; that, as you might expect, was readily conceded by the traders. That condition, so far as the Traders' Co-ordinating Committee is concerned, is agreed. There is no objection by anyone, except, I think, the Wine and Spirit Trade Association object to "(*g*) Casualty," and the Glasgow and Manchester Chambers of Commerce; I do not know whether they are pressing their objections.

Mr. Monier-Williams: The Wine and Spirit Trade Association are not.

Mr. Bruce Thomas: I am informed by Mr. Monier-Williams, who appears for the Wine and Spirit Trade Association, I think——

Mr. Monier-Williams: Yes. On this condition the objection is not being pressed.

Mr. Bruce Thomas: I am told that the Manchester Chamber of Commerce, for whom Mr. Bradley is appearing, are going to object to that. I also have a note that at one time the Glasgow Chamber of Commerce were objecting.

President: Is there anyone here from the Glasgow Chamber of Commerce?

Mr. Bruce Thomas: Apparently not; so it is just Mr. Bradley from Manchester.

Now may I pass to the fourth condition. Condition 3 dealt with damage in transit, and Condition 4 deals with the company's liability for delay or detention or unreasonable deviation. It provides as follows: "The company shall, subject to these conditions, be liable for loss proved by the trader to have been caused by delay to, or detention of, or unreasonable deviation in the carriage of merchandise unless the company prove that such delay, or detention, or unreasonable deviation has arisen without negligence on the part of the company or their servants." There the railway companies have relieved the trader of the onus of proving delay and have taken it upon themselves. At common law a common carrier was only an insurer that the goods would arrive safely.

President: So long as it was within a reasonable time.

Mr. Bruce Thomas: I stated that he was only an insurer to the extent that the goods should arrive safely. All he did with regard to the time that the journey might take was to undertake that they would get there within a reasonable time, and if a claim for delay was made against a carrier the onus was first on the trader of showing that they had not arrived there within a reasonable time, and whether or not he had to prove that the delay was due to the neglect of the company, theoretically he had; the onus was upon him. On the other hand, one knows in practice that all that a trader would have to prove would be: "While the normal transit is a day, here you have taken four days; explain it," and it would be upon the railway company in that state of affairs to satisfy any Court that, although it had taken four days, it was not their fault. However, that is made perfectly clear in this condition, and the railway company are to be liable for loss proved by the trader to have been caused by delay or detention or deviation unless the company prove that the delay has arisen without negligence on the part of the company. That is agreed, but I have a note that the Wine and Spirit Trade Association are still objecting.

Mr. Monier-Williams: No, we are not pressing that objection.

Mr. Bruce Thomas: Then the fifth condition deals with the liability of the company in respect of articles which are mentioned in the Carriers Act. I do not think there is any objection to this condition; it is agreed. It is a condition which has in some form or another appeared on most railway consignment notes for a very long time, and to some extent embodies the law to be found in the Carriers Act, but it does this, and I think it is important to draw attention to it: as from the appointed day the Carriers Act has been amended by the Railways Act in certain respects, and the respects in which it has been amended are that £10, the limit in the Carriers Act, has been altered to £25 and a new section has been added to the Carriers Act which will be Section 11. It is to be found in the Sixth Schedule to the Railways Act on the top of page 84. "The following new Section shall be added after Section 10," that is, after Section 10 of the Carriers Act. "In

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this Act the expression 'common carrier by land' shall include a common carrier by land who is also a carrier by water, and as regards every such common carrier this Act shall apply to carriage by water in the same manner as it applies to carriage by land." Both those amendment would in the ordinary course only have come into operation on the appointed day, but the traders have agreed really that effect should be given to that as soon as these conditions come into operation, and the protection of the Carriers Act is to enure for the railway company's benefit when carrying by sea. For that we have given valuable consideration in the shape of agreeing to the £25 coming into operation now.

Mr. Jepson: Do you say the railway companies have agreed to the alteration of the Carriers Act coming into operation now?

Mr. Bruce Thomas: No, not the alteration in the Carriers Act coming into force now, but in effect it will come into force whenever these conditions come into force.

Mr. Jepson: On the appointed day?

Mr. Bruce Thomas: Oh, no; well, not necessarily. This Court, when it has settled the conditions, has to appoint a day when they are to come into force.

Mr. Jepson: That may be different from the appointed day in the Act.

Mr. Bruce Thomas: Yes, it may be before the appointed day. The law then will be stated in Condition 5 here.

Then the 6th Condition provides for consignment notes being given for sea transit containing conditions which the company are entitled to impose. This is agreed, and it is to this effect: "Every consignment of merchandise to be carried by the company partly by land and partly by water, or wholly by water, shall be accompanied by a consignment note signed by the sender containing such terms and conditions applicable to the carriage of such merchandise by water as the company are entitled to impose." This, it was felt, would enable the companies to continue the existing practice of accepting consignments through to Ireland and to the Continent, and nothing arises upon that.

Then the 7th Condition, which is an important one, deals with the transfer of merchandise to an independent carrier not being a railway company of Great Britain in cases where a railway company contracts to carry to a destination which involves entrustiug the goods to an independent carrier at some point or other of the transit. The condition is framed in this way: "In the case of merchandise consigned to a destination which entails transfer to an independent carrier—which expression shall not include a railway company of Great Britain or a contractor employed by the railway company to deliver merchandise within the usual delivering area of a terminal station—(*a*) The company's obligations and liability, notwithstanding that the merchandise may be addressed through to destination, or may be carried at a through rate, shall only relate or extend to those portions of the journey performed on the system of a railway company of Great Britain, or by a contractor employed by such company to deliver merchandise within the usual delivering area of a terminal station. The transit by such company shall (unless otherwise determined) be deemed to terminate —where the journey is to be completed by any independent carrier, when the merchandise is tendered or transferred to any such carrier, or shall be deemed to be suspended—where the merchandise is to be carried by any independent carrier for an intermediate portion only of the journey when the merchandise is tendered to and not accepted by such carrier, or, if so accepted whilst it is in the possession of such carrier." A case of suspension would be traffic consigned, say, from London to the Isle of Wight, might be taken by the Southern Railway to Portsmouth and then handed to the steamboat that goes across to Ryde; while on the steamboat, so far as the railway company is concerned, the transit would be suspended: it would not be on the boat at the risk of the railway company but at the risk of the independent carrier. Then, on being put on to rail again in the Isle of Wight the transit would recommence and the Southern Railway would, of course, hold under whatever their liabilities may be. Then (*b*) is: "The Company and any succeeding carrier are authorised as agents for the sender or owner to contract for the further carriage upon the terms of any Bill of Lading or other Conditions usually required by any succeeding carrier." So that in the instance I have given, the Southern Railway Company would contract for the intermediate portion of the journey upon the usual terms which were imposed by the Steamship Company running from Portsmouth to Ryde, and, in entering into that contract, was to be deemed to be entering into it as agent on behalf of the sender with whom they have contracted. Similarly, if a railway company accepts traffic through to a foreign port but it is not going to be carried in one of the railway company's ships, the railway company are authorised on behalf of the sender of the goods to enter into the contract for the sea portion of the transit upon the terms of any Bill of Lading or other Conditions which that carrier usually requires. Now (*c*) provides that: "When the place of destination is outside Great Britain, the Company shall not be liable for loss, damage, deviation, misdelivery, delay or detention, except upon proof that the same arose on the system of a Railway Company of Great Britain, or whilst the merchandise was being carried by a contractor employed by the Company to deliver merchandise within the usual delivering area of a terminal station." Therefore, you will see that under (*d*) if goods are consigned from London to some remote place in Scotland, which we will assume is many many miles from a railway station and it is necessary for the railway company to hand the goods over to an independeut carrier to be delivered, if they are delivered broken, the railway company are to be liable unless they prove in substance that the damage happeued while the goods were in the possession of that independent carrier. That is what it amounts to, because they have to prove in such a case that the injury did not arise on the system of a railway company of Great Britaiu. The whole of that long and rather troublesome Condition—at least I am sure those who had to agree to it found it troublesome—has now been agreed, I am happy to say, and there is no one who objects to it except Mr. Major, or rather, the same thing I believe, the National Federation of Fruit and Potato Trades' Associations.

Mr. Doughty: I hope my friend will not thiuk that Mr. Major is the only member of that Association. They are a very large and influential Association, and Mr. Major is sometimes the mouthpiece.

Mr. Bruce Thomas: Sometimes, yes. I am afraid when these objections are put forward by Mr. Major we may have forgotten the Federation.

There are one or two suggestions that are made on behalf of the National Federation of Fruit and Potato Trades' Associations. I must confess that I do not quite see what the object is, but no doubt we shall hear later. The suggestion is, as I understand it, that in the fourth line of the opening words of the Condition before the word "deliver" there should be inserted "collect and/or."

Mr. Doughty: Yes, that is so. The point, if I may make it clear is, whether with regard to an independent contractor who collects for the railway company you accept responsibility for such a person or not; that is the principal matter of the objection. Your condition deals with the other end, the delivery end of the transit. The Federation desire to be reassured, or to have words in to safeguard their position with regard to the collecting end of the transit.

Mr. Bruce Thomas: Perhaps we might consider that a little later.

Mr. Doughty: Yes.

Mr. Bruce Thomas: Still, on condition 7 for a moment. I am not quite certain whether the railway carriage and wagon builders have got anything to say upon it.

Mr. Abady: No.

Mr. Bruce Thomas: They had at one time, but I do not think they have now.

Mr. Abady: We have withdrawn any objection.

Mr. Bruce Thomas: So there only remains the question that Mr. Doughty raises on condition 7.

The eighth condition is a very important one. It prescribes the time within which damage to goods must be notified and claims must be made. I am afraid there will have to be a good deal of discussion upon this condition. I do not propose to go into it fully at the moment; I may perhaps indicate generally how it differs from the existing condition. I might state, first of all, that I think for upwards of 60 years there has been in most railway consignment notes a condition limiting the time within which claims must be made, and I think that, so far as such a condition has existed at all (and I know with regard to the North Western and the Great Western it has existed since 1860 and possibly before), the limitation of time has been three days. That is the existing condition—that the claim must be made within three days. The proposal as it stands is that: "The company shall not be liable: (*a*) (i) for loss from a package or from an unpacked consignment, (ii) for damage, deviation, misdelivery, delay or detention, unless they are advised thereof in writing (otherwise than upon any of the company's documents) "—that means it will not be good enough to put upon the delivery sheet "Received unexamined," or "In loose condition," or "Broken." They will have to give a notification by letter, or a notification which will reach those who are responsible for dealing with such matters, and not upon the delivery sheet. "Unless they are advised thereof in writing (otherwise than upon any of the company's documents) at the forwarding or delivering station or at the district or head office of the forwarding or delivering company within three days (Sunday excluded) and the claim be made in writing within seven days (Sunday excluded) after the termination of the transit of the consignment or the part of the consignment in respect of which the claim arises." Where we have not been able to agree upon that part of the condition is in the three days and the seven days which are shown in block type, the time from which that notice is to be reckoned. We say three days after the termination of the transit; the traders will, I understand, say some period longer than three days after the trader has actually received the goods.

President: But is not the termination of the transit by your subsequent definition sometimes the receipt of the goods?

Mr. Bruce Thomas: I think probably in 95 or 99 cases out of 100 it will be the receipt of the goods; it may not necessarily be the receipt of the goods, but for all practical purposes I think it is the receipt of the goods.

President: This question of termination of the transit is a term of art, so to speak, under condition 10.

Mr. Bruce Thomas: Quite.

President: It may include, and does in many cases include, the receipt of the goods.

Mr. Bruce Thomas: Yes.

President: Therefore when you say "the termination of the transit" you are in a great many cases saying "the receipt of the goods."

Mr. Bruce Thomas: Yes, I should say in 95 per cent. of the cases.

President: It must be interpreted with reference to condition 10.

Mr. Bruce Thomas: Quite.

Mr. Abady: And conditiou 7, because there is something about termination in that.

President: Yes.

Mr. Bruce Thomas: I will ask you to allow me to deal more fully with that at a later stage, Sir. Then with regard to non-delivery, (*b*) provides that the notice must be given within 14 days of despatch from the forwarding station, and that the claim must be made within 28 days. The condition at present provides for the claim within 14 days.

Mr. Abady: We object to that.

Mr. Bruce Thomas: The Co-ordinating Committee do not agree that.

Mr. Doughty: Nor do the Federation.

Mr. Bruce Thomas: I am not sure that the Wine and Spirit Association and Aberdeen Chamber of Commerce have not got independent objections upon this.

President: I think they have independent objections. The Wine and Spirit people say that certain wines and spirits are moved under bond and have to be re-gauged.

Mr. Bruce Thomas: Yes, I am much obliged; I remember now the objection. We have been looking into that, and if the facts as they were represented to us are correct, it would appear that that is rather an exceptioual case; we are just examining into that.

President: I do not know, but it seems possible that the time taken up by re-gauging before delivery might be excluded from the periods before mentioned, but I do not know anything about it otherwise than I see on the objections.

Mr. Bruce Thomas: We thought when that objection was put forward that that was rather an exceptional case, and I think when we come to discuss it, we shall be able to say that we are quite ready to agree something exceptional for that particular traffic if the facts be as we understand them. We have provided, as you will see, at the traders' request, on page 11 of this book, a new condition, which at the moment is called, "New Condition 'h'," for the special conditions of such cases: "Any special conditions which may from time to time be settled by the Railway Rates Tribunal in relation to the carriage of merchandise of a particular nature or description shall in respect of such merchandise prevail to the extent that such conditions are in conflict with any of these conditions." It might be possible to meet these gentlemen, if they have a real objection, by something special, but we do not think their particular case is one that has any bearing when we are settling general conditions. I have a good deal to say upon 8, but I am not going to say it now.

Then Condition 9 provides that: "When the Company perform the cartage, the place of collection or delivery shall be the usual place of loadiug or unloading the merchandise into or from the road vehicles, but the Company shall not be under obligation to provide any power, plant and labour which, in addition to their carmen, may be required for loading or unloading road vehicles." That is agreed; it is a condition which has been on railway consignment notes for a considerable time, and I believe that the only difference is that whereas formerly it was contained in two Conditions those two have been amalgamated and cast in this form. It has been agreed with the Co-ordinating Committee and nobody else objects to it.

Mr. Jepson: I suppose the place of collection or delivery referred to in Condition 9 means the place of collection or delivery at the trader's premises.

Mr. Bruce Thomas: Yes.

Mr. Jepson: The point that occurred to me in looking it through was that as it reads it might be construed to say that there should be no obligation on the company to provide the crane power at their warehouse where they unload from the wagon into their carts.

Mr. Bruce Thomas: It is where the company perform the cartage. It is limited to cases where the company are collecting or delivering by their carts.

Mr. Jepson: Could not this also be read into it; "Where the Company are performing the cartage the place of collection or delivery shall be the usual

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place of loading or unloading the merchandise into or from the road vehicles "—that is, at their warehouse? They are going to perform the cartage and it might read that the company would not be under any obligation to provide any power plant, the ordinary warehouse crane, for instance, for lifting a consignment of 2 cwt. or 3 cwt. from the truck into their own cartage vehicle which might be the subject of separate charge under this condition; it seemed to me that that wanted making quite clear.

Mr. Bruce Thomas: If any question arises on the drafting of it, perhaps we might consider that. Certainly the intention there is to deal only with collection at traders' premises or delivery to traders' premises. Then, at the top of page 5, there is a new condition, at the moment called "g." Under that condition the company come under an obligation to give notice of arrival of traffic, and it reads as follows: "The company shall in every case when merchandise is consigned to a station (which in this condition includes a siding provided by the company for general public use) and is not to be delivered by the company's road vehicle, or by truck or barge alongside ship, give notice in writing (or by telephone, if so agreed in writing) of arrival to the consignee, or where his address is not known, or he refuses to take delivery, to the sender where it is reasonable and practicable so to do." That merely continues the existing practice of the companies, who of course do notify arrival. The traders asked for that; this will make statutory the existing practice, the existing practice obviously being a matter of convenience, although as I think it has been held a railway company strictly as a matter of law is not under an obligation to give notice of arrival.

Then Condition 10 defines the determination of the transit: "The transit shall (unless otherwise previously determined) be deemed to be at an end— (*a*) In the case of merchandise to be carted by the Company, when it is tendered at the usual place of delivery as defined by Condition 9 hereof." If I might pause there for a moment, transit will end in the case of a consignment which is addressed to a consignee who lives at the top of a block of flats, when the goods are tendered at the usual place where goods are delivered at that block of flats, and there will be no obligation to take it to the top floor. If by chance the railway carman, as I believe often is the case, is persuaded to carry it up to the top of the block of flats, the railway company will not be a common carrier when its carman is carrying the goods up the stairs.

Mr. Jepson: There are separate regulations under which those deliveries are done, like cellaring stuff and carrying stuff upstairs and downstairs in warehouses, and so on; they are subject to special arrangements made by the various railway companies in the different districts. I think. The object of this Condition is to exclude all those services from these Conditions.

Mr. Bruce Thomas: I am told that those are not arrangements made with traders, but they are instructions given to carmen as to what they may or may not do.

Mr. Jepson: Yes.

Mr. Bruce Thomas: Might I just read that portion again: "The transit shall (unless otherwise previously determined)"—of course, it may be determined in many ways; it might be determined by a stoppage in transit, or it might be determined by the expiration of the period mentioned on the advice note, which is mentioned in the next paragraph that we come to, but if it has not been previously determined, then the transit will be determined when the goods are tendered at the place that I have indicated by way of illustration. That is the existing condition, but you will observe that the following words here are an addition to the previous Condition: "Within the customary cartage hours of the delivery district or at such other times as may be agreed between the Company and the Trader." That does not appear in the existing consignment note, and the traders pressed that tendering at an hour which was not within the customary cartage hours of the delivery district should not terminate the transit, and that objection has been given effect to. Then (*b*) is that the transit shall be deemed to be at an end. "In the case of merchandise not to be carted by the Company or to be retained by the Company awaiting order, at the expiration of one clear day after notice of arrival is given in writing (or by telephone if so agreed in writing) to or at the address of the consignee or, where the address of the consignee is not known, to or at the address of the sender, or where the addresses of both the sender and the consignee are not known at the expiration of one clear day after the arrival of the merchandise at the place to which it is consigned." Of course, the most important provision there is that the transit is to end where the consignee is known at the expiration of one clear day after notice in writing is given to him that the goods have arrived at the station. The Company by this definition of termination of transit are retaining the goods or are retaining the liability of a common carrier, or perhaps I ought to say are retaining their liability as a carrier for a longer period than under the existing conditions. Under the existing conditions the transit ends in the case of goods not to be carted by the Company at the expiration of 24 hours after notice of arrival is delivered to the consignee. It is provided in this condition that it shall expire at the close of the day following the receipt of the advice, so that if traffic arrives at its destination on a Monday and the consignee receives the advice, if it is posted to him in the ordinary course, on the Tuesday, he has one clear day after receiving that advice. He has the whole of Tuesday and he has the whole of Wednesday, and it is only on Wednesday night that the Company ceases to hold the goods in transit; that is an extension of the present period. The sub-paragraph (*c*) of Condition 10 is entirely new; it deals with siding traffic and it provides that the transit shall be deemed to be at an end "In the case of merchandise to be carried to a siding not belonging to the Company—(i) When it is delivered upon the siding or at the place where, by arrangement, the Trader takes delivery"—it is clear, of course, that that is when the transit must end in those circumstances—" or (ii) If the consignee is unable through no fault of the Company, or is unwilling to take delivery at the expiration of one clear day after the receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver "—that is substantially the same as in regard to station traffic—" or (iii) If the consignee is prevented from taking delivery through the act or omission of the Company when the cause which has prevented him from taking delivery has been removed and the merchandise is delivered in accordance with paragraph (*c*) (i) or notice is given in accordance with paragraph (*c*) (ii) of this Condition." That means, as I understand it, that the transit ends in a case where the consignee is prevented from taking delivery through the act of the Company when the cause which prevented him taking delivery has been removed and the merchandise is either delivered or he has received a notice as prescribed by the earlier part of the Condition. This Condition has been inserted to meet cases where the Company are compelled to hold up traffic in transit owing to difficulties which they have on the railway of working the traffic, and as a result of the Company having to hold up traffic in transit, a consignee who may have made all proper arrangements, so that he gets no more than three or four or six wagons coming in each day, may suddenly find the railway company offering him far more than his private siding will possibly accommodate; then it is provided that in that case he is unable to take delivery of the traffic through the act of the company. Then the Condition provides that the company are to retain those

goods as carriers, and they are to hold them, and the transit is not to end until the cause, which has prevented the consignee from taking delivery, has been removed.

President: Is not the notice referred to in (*c*) (iii) equivalent to the expiry of the time in (ii)? The notice is made equivalent to the expiration of the time after notice? Do you see what I mean? It looks as if that is so, and if that is what you intend I have nothing to say about it.

Mr. Bruce Thomas: I follow what you mean. It does not provide for a certain period after the notice is given.

President: No. The bare notice is made equivalent to the expiry of the time after the notice; I dare say it is intended.

Mr. Bruce Thomas: I think that is rather a defect in it. It is intended not that the giving of the notice should terminate the transit, but that the transit shall terminate in the manner in which it terminates under (*c*) (ii), when notice is given.

President: However, that is a drafting point.

Mr. Bruce Thomas: We shall have to see to that; I am much obliged.

Mr. Jepson: Would it not make it clear if you were to insert a comma after the word "delivery" in the second line of (*c*) (ii), "if the consignee is unable through no fault of the Company, or is unwilling to take delivery"—it wants a comma there, does it not? Then it goes on that the termination of the transit expires "at the expiration of one clear day after the receipt by the consignee of notice in writing." It does not mean "or is unwilling to take delivery at the expiration of one clear day after the receipt by the consignee of notice in writing."

Mr. Bruce Thomas: No. I imagine that at some time or other all the Conditions will have to be looked at somewhat carefully from the drafting point of view—I do not mean so much the alteration of the phraseology, but there are a number of places where I think the meaning will be made much more clear if a few more commas are used, or possibly some brackets inserted. We will note that which you kindly draw attention to, Sir.

President: While you are on that, Mr. Jepson drew attention to what he considered to a defect in Condition 9. I am sorry to take you back to Condition 9, but would it be cured if the word "traders" was inserted before "usual" in the second line—"when the company perform the cartage the place of collection or delivery shall be the usual place of loading or unloading"?

Mr. Bruce Thomas: No. The place for taking delivery would very likely be his front door on the top floor.

President: That is on 9?

Mr. Bruce Thomas: Yes.

President: Very well; we will not put it in.

Mr. Bruce Thomas: this satisfies everyone, so far as I know.

President: Quite so; it was only to try and meet the point that Mr. Jepson made.

Mr. Bruce Thomas: It has this merit, that it has been in operation for a long time.

Now passing from 10, the next Condition is 11, which deals with the liability of the Company after transit, and it is in this form: "After the termination of the transit, as defined by Condition 10 hereof, unless otherwise agreed in writing, the Company will hold the merchandise as warehousemen, subject to the usual charges and to the condition that they will not be liable for any loss, misdelivery or detention of or damage to," and then there are certain exceptions; so you will see that after the termination of the liability subject to the exceptions which are these, that the Company "will not be liable for any loss, misdelivery or detention of or damage to—(i) Merchandise not properly protected by packing except upon proof that such loss, misdelivery, detention or damage arose from the negligence of the Company's servants and would have been suffered if the merchandise had been properly protected by packing"; that is a similar provision to the one which I think is being inserted in the damageable goods note, and it is more or less in a form that was discussed at considerable length before the Rates Advisory Committee a year or two ago, when the traders strongly pressed the companies to accept liability for improperly packed goods which were damages in transit when it could be shown that they would have been damaged even had they been properly packed. That was assented to, and they have assented to an exception in a similar form here. Then, secondly, the Company will not be liable for loss or damage to "Articles or property of the descriptions mentioned in the Carriers Act, 1830." Hitherto, it has always been questionable whether the Carriers Act would have afforded a railway company any protection after the termination of the transit. While goods are in transit, clearly the Carriers Act applies, but there has been some doubt expressed as to whether the Carriers Act would still have afforded them protection when they are left on their hands, and they are no longer holding them as a carrier, but as warehousemen, and it obviously would seem to us to be only fair that the protection of the Carriers Act should apply to a railway company, when they were holding the goods through the default of the consignee in not taking delivery. The Traders readily took the same view, and it has been provided for in this Condition that the Carriers Act will extend to them while they are holding as warehousemen.

Mr. Abady: Of course, where the railway companies are acting as insurers they would be liable.

Mr. Jepson: One could not help hearing Mr. Abady's remark, and I was going to raise the same question as to when the goods are insured. Under the scale that has to be provided hereafter, that would only necessarily insure them during the whole transit or during the holding of the goods by the railway companies as carriers; would it cover also the period during which they held them as warehousemen, unless it was specifically stated in the note?

Mr. Bruce Thomas: No. If a trader is going to leave valuable goods on the railway companies' hands, leaving them in their possession as warehousemen, then he cannot do that for the ordinary warehousing rate; he would have to make some special arrangement with regard to that. We do not want gold and silver and precious stones on our hands if we are going to be liable for their loss.

Then the second exception under (ii) is that the Company are not to be liable for damage to "Merchandise which has arrived at the destination station and for which the Company give notice that they have not suitable accommodation, by whomsoever such loss, misdelivery, detention or damage may be caused and whether occasioned by neglect or otherwise. Provided that this Condition shall not relieve the Company from any liability they might otherwise incur under these Conditions in the unloading of the merchandise." That Condition has been agreed.

Mr. Doughty: We object to that.

Mr. Bruce Thomas: I beg your pardon; there is no objection to Condition 11 by the National Federation of Fruit and Potato Trades' Associations. I have got it noted here, and perhaps I might give you what they ask for. They ask that the Condition should read in this way, following the print: "After the termination of the transit, as defined by Condition 10 hereof, unless otherwise agreed in writing, the Company will hold the merchandise"—then they delete everything else and insert: "subject to the provisions of the Fifth Schedule of the Railways Act, 1921." It would, therefore, read: "After the termination of the transit, the Company will hold the merchandise, subject to the provisions of the Fifth Schedule of the Railways Act, 1921." Condition 11 purports to deal with the liability of the Company after transit—no doubt Mr. Doughty will explain that proposal later.

Mr. Jepson: With regard to that proviso at the end, that is "Provided that this Condition shall not relieve the Company from any liability they might otherwise incur under these Conditions in the unloading of the merchandise," do the Companies accept the full liability, supposing they have to cart it after

its release from the warehouse, and they have to deliver?

Mr. Bruce Thomas: The cartage will be the subject of a separate contract. What this deals with, if I might answer Mr. Jepson's questions, is this: traffic arrives in a truck and the consignee is advised; he does not come to fetch it within the period of the transit; he comes at a later stage. Although the Company for several days may not have been holding them as carriers, but as warehousemen, when it comes to unloading them they are to unload in their capacity as carriers; that is what it amounts to.

Mr. Jepson: My question following that up was this: if they have to deliver do they still deliver in their capacity as carriers or in some other capacity? If they deliver in their capacity as carriers are they liable as insurers, although they have been holding for some intermediate period as warehousemen.

Mr. Bruce Thomas: I do not know on what terms the railway companies are going to cart upon, but the cartage will be the subject of a different and a separate contract, and will not be affected by this Condition at all.

Mr. Abady: This is dealing with an agreed Condition. I do not think the Co-ordinating Committee were under that impression. I agree the cartage may be the subject of a separate charge, but there may be circumstances in which it may be carried out as part of the original contract, and there may be cases where it will be carried out as a separate contract.

Mr. Jepson: What I had in my mind was this, and I think it is what commonly occurs: a consignment of merchandise is sent down to the station; the consignee is not able to take delivery of it at once, and he advises the station before it arrives and says: "When these goods come will you hold them for me for a week?" Under these regulations after a certain time has elapsed the railway company hold them, not as carriers, but as warehousemen. When the consignee is able to accept delivery he advises the agent, and they are carted probably within the original contract for delivery; that was the reason I followed up my question as to cartage when you explained with regard to unloading. Perhaps Mr. Pike will be able to deal with that when we come to it.

Mr. Bruce Thomas: Yes; that is taking the state of affairs as they exist to-day.

Mr. Jepson: Yes.

Mr. Bruce Thomas: Where goods are carried at collected and delivered rates, where the contract is the through contract to be delivered at the consignee's address?

Mr. Jepson: May not we anticipate that in the future, even after the appointed day, although there will be separate charges, although the lines are laid down for a separate charge being made for collection or delivery as compared with conveyance, yet there will be in many cases a very large number of through contracts for delivery including the delivery charge?

Mr. Abady: I think Condition 7 provides for that.

Mr. Bruce Thomas: We feel rather in a difficulty in dealing with Mr. Jepson's question, because as from the appointed day at the moment we do not know under what conditions the railway companies will cart. You have before you Section 99 of the Railways Act of 1921 which provides: "On and after the appointed day a railway company may collect and deliver by road any merchandise which is to be or has been carried by railway and may make reasonable charges therefor in addition to the charges for carriage by railway"—and shall publish those in the books—"Any such company may, and upon being required to do so and upon payment of the proper charges shall, at any place where the company holds itself out to collect and deliver merchandise, perform the services of collection and delivery in respect of such merchandise as is for the time being ordinarily collected and delivered by the company at that place." Then there is a proviso: "That the company shall not be required to make delivery to any person who is unwilling to enter into an agreement terminable by him on reasonable notice for the delivery by the company at the charges included in the rate book of the whole of his traffic."

President: It only legalises the present practice with the proviso which you have mentioned.

Mr. Bruce Thomas: Well, the proviso gives the railway company the undoubted right to say: "Well, we will cart all your traffic, or we will not cart any. We will not just cart a little when it suits you." The idea is, as I understand, that the rates in future will be all station to station rates, and that the cartage will be the subject matter of special contract. What the Conditions will be under which the goods are carted I do not know, and I do not know whether anybody else knows at the moment, but assume for the moment that the company sought to restrict their liability with regard to cartage, then, of course, in the case that Mr. Jepson puts of carriage by railway under these Conditions, they would hold as warehousemen under these Conditions, and if at a later period they were asked to cart, then they would cart under the cartage Conditions if there were any special ones.

President: I rather took Mr. Jepson to mean that it would not be at the later stage that they would be asked to cart.

Mr. Jepson: One cannot imagine, although the scheme of railway rating is to have separate station to station rates and separate charges for cartage, that in practice that could last very long. If 90 per cent. of the class traffic, or traffic carried at standard rates and exceptional rates, is going to be carted by the railway company, one cannot believe that there is going to be a very big turnover at any rate from the cartage which is being done at present by the railway companies to private owners' carts. One cannot imagine that for a moment, and one cannot imagine that two systems of charging will last, that is, one charge at the station to station rates, and another charge for cartage. In some form or another it will have to be an inclusive charge one would think to save clerkage, to save invoicing, to save account keeping, and to save trouble to everybody all round. I was only wondering whether as under the present conditions in the case I have mentioned of course the ultimate cartage would have to come in, and would have been done by the railway companies as carriers as part of the original transit contracted for.

Mr. Bruce Thomas: It may not be; that all depends on whether a special contract is made which is to relate to the cartage part of the journey only.

Mr. Jepson: I quite agree; it is very difficult to give an answer now, because you do not know what will be the Conditions, but it may be that this point would have to be met when we do know the Conditions later on by having an amendment to the Conditions, if it is open to us, and I think it is; we can amend from time to time on application.

Mr. Abady: On this point I am asked to state on behalf of the Co-ordinating Committee that while the specific difficulty that Mr. Jephson referred to was not raised or discussed, it was anticipated that in many cases the contract of carriage would include the cartage, and therefore if there was a break and subsequent cartage it would come under the original contract. I am only asked to say that if it is relevant now to what we are doing, and it is necessary to reserve any particular Condition on account of any doubt on this point we ask that that should be reserved and be the matter of further discussion between the Co-ordinating Committee and the railway company.

Mr. Bruce Thomas: Then Condition 12 is the next one, and that Condition provides that the sender is to be liable for carriage and certain other charges. Upon this Condition there is a very considerable difference of opinion. A good deal of agreement has been come to, but all that which is shown in block letters is not agreed to and is going to be opposed, not only by the Co-ordinating Committee, but I think that several interests are separately represented. Condition 12 as now proposed by the

railway companies is: "The Company's charges for carriage or for the detention of their trucks, barges, road vehicles, sheets, articles or plant, or for the occupation of their sidings by the trucks of private owners—(*a*) before or after transit, or (*b*) during transit, in consequence of (i) the consignee not being ready to accept delivery, or (ii) delay or congestion at a port, or other place of shipment, whether the merchandise is consigned at through rate or otherwise, shall be payable by the sender without prejudice to the Company's rights against the consignee or any other person." That deals with two distinct sets of charges. The traders agree that the company shall be entitled in all cases to look to the sender for the carriage charges, but they object to the proposal that the company should be entibled to look to the sender for—I will only use one term—demurrage. They have other objections under that, and they are put by those who are concerned, and perhaps when we disenss it I may be allowed to go into that fully.

Mr. Abady: Yon said there were two, but of course there are three. "Demurrage" and "occupation of sidings by private owners" are separate, are they not?

Mr. Bruce Thomas: Well, it is the same principle, I think.

Mr. Jepson: I snppose when yon say "The Company's charges for carriage," the word "carriage" may be taken in its widest sense including, where the railway companies are contracting for cartage, the cartage, and where the railway companies are contracting to snpply wagons in the case of a traffic for which the conveyanee rates do not provide wagons, it includes wagon hire, because all these other things mentioned, detention before or after transit, and so on, seem to me to be something outside transit, and so I suppose the carriage charges would include cartage and would include wagon hire where it is charged for. I was looking for a definition of "carriage," and I do not see one; probably it is the only place where it occurs.

Mr. Bruce Thomas: I do not think there is any. I do not know of a better term than "carriage charges." One does not want to say: "advance rates," or anything like that, because there are terminals and all sorts of things to be considered.

Mr. Jepson: So long as those things are understood by the Co-ordinating Committee as well as the railway company, there cannot be any objection, of course, but one wanted to be clear, as we are considering the words now, and so that no dispute may be raised hereafter by any of the traders that the words "carriage charges" there did not include wagon hire and did not include cartage where the railway company were to cart.

Mr. Bruce Thomas: Even if they succeeded in that, it would not avail the sender who had ordered wagons. I do not imagine that any question of that kind would be likely to arise, because quite apart from this condition, if "carriage charges" did not include wagon hire, the man who orders a wagon from the company has got to pay for it or be liable to pay for it otherwise. It is not as if he could get out of the liability, even if he could show that "carriage charges" did not include wagon hire. However, the point of difference here is that those services for which a charge may be made—I think it is now under Section 11 of the Fifth Schedule of the Railways Act—should not be put upon the sender. There is one thing that we have provided for even with regard to "carriage charges," and that is contained in the proviso at the end of the Condition: "Provided that when it is stated on the consignment note that charges are payable by the consignee, the sender shall not be required to pay such charges unless the consignee fails to pay after reasonable demands have been made by the company for payment thereof." The traders, I think, at one time were hopeful that a condition might be devised which would in all cases put the obligation to pay the carriage charges upon the consignee. There were many objections to that.

Mr. Abady: That is when it was carriage forward.

Mr. Bruce Thomas: In all cases when it was carriage forward. I think we have finally agreed that it should not be done; I think we were all agreed about that. Of course, in a great number of instances traffic is consigned "carriage forward," and the sender expects the consignee to pay. On the other hand, the raiway company is in this position: they are entited to demand payment before they receive the goods for carriage; they enter into the contract with the sender, and they say to him: "We will take these goods without asking you for the carriage charges beforehand, but if we do and we cannot get them at the other end, you must be made liable." That has always been the Condition in the past, and so that part of the Condition was accepted by the traders, but they asked us to give an undertaking that, when traffic was consigned carriage forward, we would make reasonable efforts to obtain it from the consignee before calling upon the sender to pay. That we assented to. In fact, they did not press us to agree to sue him and fail before looking to the sender; they did not suggest that would be a reasonable thing to expect the railway companies to do. I think the proviso that now appears in the Condition satisfies them; but it relates of course only to carriage charges. I believe the National Federation of Iron and Steel Manufacturers have an independent objection to this provision.

Condition 13 confers on the companies both a particular and a general lien. The part of it that is objected to is that which confers npon them a general lien. A particular lien they have at common law. We are asking that the present Condition which confers upon the railway companies a general lien and which has been on railway consignment notes for many years, should be preserved. We think we can show good reason why it should be retained; but I will deal with that more fnlly at a later stage.

Condition 14 deals with the sale of perishable traffic. It provides as follows: "Where perishable merchandise—(*a*) is refused by the consignee, or (*b*) is not to be carted by the company and is not taken away from the station of destination within a reasonable time after arrival, or (*c*) is not addressed or labelled in accordance with Condition 1 hereof, or (*d*) is not delivered in consequence of riots, civil commotions, strikes, lockouts, stoppage or restraint of labour, from whatever cause, whether partial, or general, or (*e*) is not delivered in consequence of damage or obstruction to the railway caused by flood or landslip where no reasonable alternative route is available, the merchandise may be sold by the company and payment or tender of the proceeds of any such sale after deduction of all proper charges and expenses in relation thereto shall (without prejudice to any claim or right which the sender or consignee may have against the company otherwise arising under these Conditions) discharge the company from all liability in respect of such merchandise or the carriage or delivery thereof. Provided that—(i) The company shall do what is reasonable to obtain the valne of the merchandise. (ii) Where the merchandise is not carried through to the destination to which it was consigned by the sender the charges payable to the Company shall be those in operation for the journey actually completed, but shall not exceed the charges for the full transit. (iii) Where telegraphic or telephonic communication is reasonable and practicable the power of sale shall not be exercised unless notice has been given to the consignee in cases under (*b*) and (*e*) and to the sender in cases under (*a*) or (*c*) and the consignee or sender has failed to give immediate instructions for disposal by telegraph, telephone, or by hand to the company at the station from which the notice was sent." That Condition has been agreed with a small, but, I think, somewhat important exception, and the Co-ordinating Committee ask that the reference to notice in cases under (*a*) or (*c*) be amended to read "In cases under (*a*) (*c*) or (*d*)."

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Mr. Doughty: The National Federation are very keen on that.

Mr. Bruce Thomas: I think what it comes to is that in cases of strikes they want the consignee or sender to be communicated with before the power of sale is exercised. Mr. Pike will deal with that in evidence when I call him. It would be absolutely impossible to carry out such a condition; and the result, of course, would be that if one were not permitted to sell unless notice were first given, and if it is impossible to give that notice, then it would be obviously greatly to the disadvantage of the owner of the goods that the company should not be permitted to make the best they could without giving him any notice at all.

Mr. Monier-Williams: On this Condition it is the National Federation of Fruit and Potato Trades' Association who are chiefly interested, and, therefore, they propose to press for this particular alteration. The Co-ordinating Committee are also interested, but I understand the case for this alteration is to be left primarily to us——

Mr. Abady: That is so.

Mr. Monier-Williams: ——with the support of the Co-ordinating Committee; because my Federation are largely interested in perishable products.

Mr. Bruce Thomas: Condition 15 deals with the circumstances in which non-perishable traffic may be sold: "Where merchandise (other than perishable)—(*a*) is held 'To wait order' or 'To be kept till called for' and such order is not given, or such merchandise is not removed within a reasonable time, or (*b*) is of a description for which the company have not or do not provide accommodation at the place of destination, or (*c*) is unclaimed and the names and addresses of the sender and consignee are not known and cannot be ascertained, or (*d*) is refused by the consignee, or not delivered because the consignee is not known, and in either case the sender fails to take delivery, or to give instructions for disposal, the company may sell the same, either separately or by inclusion in a sale of unclaimed goods, and payment or tender of the proceeds of such sale, after deduction of all proper charges and expenses in relation thereto, shall (without prejudice to any claim or right which the sender or consignee may have against the Company otherwise arising under these Conditions) discharge the Company from all liability in respect of such merchandise or the carriage or delivery thereof. Provided that—(i) The Company shall do what is reasonable to obtain the value of the merchandise. (ii) Where the merchandise is not carried through to the destination to which it was consigned by the sender, the charges payable to the Company shall be those in operation for the journey actually completed, but shall not exceed the charges for the full transit. (iii) The power of sale shall not be exercised (*a*) where the name and address of the sender or the consignee is known unless the company shall have sent notice in writing by post or otherwise to the sender or consignee that the merchandise will be sold if not taken away within 14 days (including Sundays), or (*b*) where the names and addresses of the sender and consignee are not known unless the company shall have published by advertisement in a newspaper circulating within the district where the merchandise is held, or from which it is sent, if in Great Britain, notice of their intention to hold such sale unless the merchandise is taken away within 14 days (including Sundays) after such publication." I think no one raises any objection to that.

Condition 16 is an important Condition. It deals with the non-liability of the company for loss of the market and indirect damages: "The Company shall not in any case be liable for—(*a*) loss of a particular market, whether held daily or at intervals, or (*b*) indirect or consequential damages, or (*c*) subject to these Conditions, loss, damage or delay proved by the Company to have been caused by or to have arisen from—(i) insufficient or improper packing; or (ii) riots, civil commotions, strikes, lockouts, stoppage, or restraint of labour from whatever cause, whether partial or general; or (iii) consignee not taking or accepting delivery within a reasonable time." The Co-ordinating Committee are raising one or two important objections upon that. First of all, they object to those words "in any case" in the opening line; and then they object altogether to the proposal that the company are not to be liable for loss of a particular market, and also to the proposal that the company are to be liable for indirect damages. Then there is another question which arises upon this Condition to which I understand the Co-ordinating Committee attach importance. It is a part of the Condition which is not in black letters: "(*c*) subject to these Conditions, loss, damage or delay proved by the company to have been caused by or to have arisen from insufficient or improper packing." They want it made clear that that Condition is also to be subject to Conditions 3 and 4. As I understand what it amounts to is this. One would have thought at first sight—and I think so still, but I am told that something else has been agreed, though I shall have, perhaps, to inquire about that—but the suggestion is this: If you turn back first of all to Condition No. 3, you will see that Condition lays down the general rule of what the Company's liability is to be during transit; but it says: "This shall be the Company's liability subject to these Conditions." Then when you come to 16 you find there is an exception to the general rule. It is a sort of proviso to the general rule: That the Company shall not in any case be liable for loss caused by or proved by them to have arisen from improper packing. That is just an exception to the general rule; the Company generally to be liable for loss in transit, but the Company not to be liable where they prove that the damage has been caused through improper packing. They would not have been liable at common law in those circumstances; and Condition 16 was intended to make that perfectly clear, that, in spite of the affirmative declaration of liability which is to be found in Condition 3, nevertheless the old exception from that liability was to be retained. That would appear pretty clear; but in Condition 16, which is an exception or a proviso to Condition 3, you find: "Subject to those Conditions."——

President: To go round and round, so to speak.

Mr. Bruce Thomas: Yes. First of all, you have the operative part of the section and it says so-and-so subject to what is hereinafter provided. When you come to the proviso, which is an exception from the operative part, it says: "Subject to what is contained in the operative part of this section it is to apply." Then when you get to the operative part it refers you back to the proviso; and one would have thought that "Subject to these Conditions" was put in by mistake. One knows how very anxious people are when they are drafting, especially if they happen to be drafting in a hurry; and all sorts of words creep in which are really not necessary, and I should have thought that those words were not only not necessary, but it is rather foolish to put them in. I understand that what the Co-ordinating Committee wish to have made clear—and at the time it was thought that those words "Subject to these Conditions" did make it clear—is this: The Company are to be liable as a general rule for damage in transit, but the Company are not to be liable where they prove that the damage has resulted from improper packing; but all that is to be subject to the proviso which you will find at the foot of Condition 3, "Provided that the Company prove that they have used all reasonable foresight and care in the carriage of the merchandise." Of course if that really is the agreement we must abide by it. But may I just point out what it would mean in practice. A railway company would be sued for having broken certain articles contained in a box during transit——

Mr. Abady: I think I am entitled to ask my friend not to proceed to tell the Court what the effect of the result of the agreement would be in the sense of trying to get you to alter it. If it is an agreement I do not think either of us ought to go back on it.

My case, as I understand, is that it is agreed Condition 16 should be subject to Conditions 3 and 4, and we only raise some doubt on the drafting whether it is so. I do not think we ought to take the matter further than that, if I may say so with respect.

Mr. Bruce Thomas: I said so. I said if that is the agreement, very well, we must have appropriate words to provide for it.

President: Mr. Abady would like us to keep quite an open mind; we shall do that in any case, but you will not go much further than you have gone. We are in possession of what the difficulty is. The question is whether you have put yourselves in the difficulty and cannot get out of it, or whether you can by agreement get out of it.

Mr. Bruce Thomas: If they have agreed, I am not to be let off. The question is whether they have been agreed. I shall be told at once by those who are instructing me; and if we have agreed we cannot ask the Tribunal to come to any different conclusion if my friends object, and I understand that they do object.

President: The only thing which you have said this morning which rather interests me is this: You are cutting adrift this question of cartage conditions. I understand we have been going through the draft as if the old system of cartage is prevailing, but you are going to have another set of Conditions as to cartage charges. Where are they?

Mr. Bruce Thomas: That raises a question as to whether this Court is directed by the Act to settle the cartage conditions.

President: Yes, I know; but you see what I mean. You have been going on, and your Conditions have reference to where you are going to cart and where you are not going to cart. You rather led us to suppose that the old system of cartage charges would go on as heretofore. Now I rather think in answer to what Mr. Jepson said you replied: "That is a matter for cartage conditions hereafter."

Mr. Bruce Thomas: You must bear this in mind. These Conditions may be settled very quickly by this Court and they may say they shall come into operation on, say, the 1st of September. Then, of course, they would have to operate under the existing state of affairs until the appointed day.

President: Yes.

Mr. Bruce Thomas: And the existing state of affairs includes, of course, the ordinary cartage arrangements which are in existence to-day.

(*Adjourned for a short time.*)

Mr. Bruce Thomas: Before proceeding with the next condition, might I take up the question of cartage, Sir, that was raised both by you and by Mr. Jepson, because I think some of the observations I made in connection with it were not correct, and I should like at once to have an opportunity of putting what we understand will be the position after the appointed day, and how these Conditions will be applicable in cases where the company are carting? I will, if I may, deal with that for a moment. The Railways Act provides that the charges for conveyance and for terminals shall be shown separately, and that the charges for conveyance and terminals shall be shown quite separate also from any cartage charges. But no doubt the existing practice of entering into arrangements with traders to deliver traffic will continue possibly to the same extent as that practice exists to-day; and wherever those arrangements are continued then these Conditions will apply to cartage to the extent that they appear on the face of the Conditions to be made applicable. If I might try to make it clear by an illustration: A trader in the country wishes to send traffic to a customer in London, and his arrangement with the railway company is that they shall carry his traffic to London and deliver it to the customer, and the charge that he will pay for that will be the conveyance and terminals and the cartage charge. The Act contemplates that those charges will be shown separately. But the arrangement will be for the company to deliver. Now, in those cases, if you will now turn to Condition 10, the transit will continue until the traffic is tendered at the usual place of delivery, as defined by Condition 9, because that is a case where merchandise is to be carted by the company. Mr. Jepson put this question to me: Supposing a consignee writes to the company and says, "I am expecting some goods from So-and-so to arrive. When they arrive will you please hold them for 3, or 4, or 5 days, and do not cart them until I notify you." In that case it depends upon how long the company are asked to hold them, the period during which they would be holding as warehousemen. But once they started to cart—when they had received the instructions from the consignee to cart—then the intention of the company is that while they are carting their capacity as a carrier should revive. That is as we understand it. That is where it is merchandise which is to be carted by the company. So far I think that covers the whole of the point that was put to me.

Mr. Jepson: That is where the original contract was for the company to deliver?

Mr. Bruce Thomas: Yes. But there is another case. There will be a considerable amount of traffic which will be consigned simply to a station and not

Mr. Jepson: Falls in the rates.

Mr. Bruce Thomas: Yes. But whether those will be the conditions existing after the appointed day is another matter. Very likely it may be that one will see railway carts going about as one does to-day. No doubt one will. But, as I understand it, this particular set of Conditions will not apply to the goods while they are being carted along the streets.

Mr. Jepson: After the appointed day.

Mr. Bruce Thomas: Yes, after the appointed day.

Mr. Jepson: Then at some time before the appointed day, if that is the view of the railway companies, some of these Conditions will require altering, will they not, because they speak of the termination of the transit being at the end of the cartage by the railway company, not necessarily the through rate?

President: I think that is a matter you had better consider with your clients, Mr. Bruce Thomas. We should like to know what the view of the railway companies is as to the future of cartage charges; whether they mean the Conditions to stand in the future, cartage or no cartage, or whether they will come back and say: We shall have cartage on a different basis, and want them all.

Mr. Bruce Thomas: I do not appreciate where any difficulty arises. In Condition 10 cartage is mainly referred to in reference to termination of transit. Condition 10 says that when the company carts the goods then the transit shall continue until the company arrive at the ordinary place where goods are tendered for delivery. The Conditions are specific on that. So that there is no question that where the company do cart under Condition 10, where they cart and deliver them themselves, then the Conditions say that the transit is to continue up to that point.

Mr. Jepson: The liability runs at the same time but the transit does not.

Mr. Bruce Thomas: Certainly; because Condition 3 says a company's liability shall be the following, during transit.

Mr. Jepson: Yes. Now you say that may be very different after the appointed day because that Company will not be conveying at a through rate including the cartage.

Mr. Bruce Thomas: Perhaps we might have a word upon this at a later stage.

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to be carted so far as the sender is concerned; he will not have made any arrangement at all about the carting. And if the consignee, instead of fetching the goods himself from the station, makes an arrangement with the railway company for them to deliver the traffic, then that will be a case which will not be covered by these Conditions, because the transit will have been determined in the changed circumstances under the second part of Condition 10; and where a contract for cartage is made, in those circumstances the particular terms of that contract will have to be arranged between the parties or prescribed by the railway companies so far as they are entitled to prescribe them themselves.

Mr. Lockett: Shall we have any control over those Conditions in such a case as that?

Mr. Bruce Thomas: In my view, no.

Mr. Lockett: I rather gathered so. They are not part of the original contract.

Mr. Bruce Thomas: No. There is no obligation upon the trader at all; he is not compelled to come to us for cartage; he can cart or not, and he will know what the railway company's charges for cartage are. They are subject to the control of this Court; they have to be reasonable. He will know the conditions, and he can accept them or not as he thinks fit. If he thinks they are too onerous and that it will pay him better to carry himself, then no doubt he will do so.

Mr. Jepson: I do not know whether you have considered the question, but in the last illustration you gave us would the railway company when carting the traffic as a separate arrangement be subject to the Carriers Act or be a carrier within the meaning of the Railways Act?

Mr. Bruce Thomas: Whether they would be common carriers would depend upon their profession. They would or would not be common carriers according to what they held themselves out to do or to be. But I imagine that if they are advised that they do not get the protection of the Carriers Act without making special conditions, then they will have to look after themselves and by prescribing conditions get whatever protection they may be entitled to.

President: Will you now deal with Condition 17?

Mr. Bruce Thomas: If you please, Sir. Condition 17 is a condition in which my friend Mr. Holman Gregory is interested. It deals with loss through a defect in a truck belonging to a private owner. That is a condition says, "In the event of any defect in a truck or sheet not belonging to or provided by the company and upon proof by the company that such defect did not arise from the negligence of the company's servants, the company shall not be liable for—(*a*) loss of or damage or delay to merchandise contained in such truck or covered by such sheet arising from any such defect, or (*b*) loss of or damage or delay to merchandise which may be suffered by the trader by whom such defective truck or sheet is provided and results from such defect." The Traders' Co-ordinating Committee have agreed that condition subject to this: That they are going to ask you to insert the words " and that the company when not guilty of negligence in not discovering such defect " after the word "servants" in the fourth line. That will have to be discussed. We cannot agree to that proposal because, after all, it is the duty of a private owner to put a wagon on the railway which is in a proper condition, and this apparently is an attempt to impose the very serious obligation on the railway companies of examining the wagon to say that it is in a proper state. I am told that Mr. Tyldesley Jones is also appearing in opposition to that condition. Although there are several objectors, I think the point upon which they object is the same. I have had a note that the Wine and Spirit Trades' Association who are objecting may perhaps be content to leave it in the hands of the other numerous objectors.

Condition 18 deals with faulty loading by the sender. It says: "Where loadiug or covering is performed by the sender, the company shall not be liable for loss of or damage or delay to merchandise so loaded or covered upon proof by the company that such loss, damage or delay would not have arisen but for faulty and/or improper loading or covering on the part of the sender. For the purpose of this condition merchandise shall not be deemed to be loaded or covered in a faulty and/or improper manner if loaded or covered in the manner directed by the company." This condition has been agreed to except that the Traders will ask that the words "and not under the supervision of the compauy" be inserted after the word "sender" in the first line. In addition, I think the National Federation of Fruit and Potato Trades' Association will ask that there be also inserted after the word "sender" in the first line the words "and no charge is iucluded for these services in the rate," or words to that effect. I will now draw your attention to one or two matters upon this. Under the existing Rates and Charges Orders—I think it is the proviso to Section 4—this is enacted, "That where merchandise conveyed in a separate truck is loaded or unloaded elsewhere than in a shed or building of the company, the company may not charge to a trader any service terminal for the performance by the company of any of the said services if the trader has requested the company to allow him to perform the service for himself and the company have unreasonably refused to allow him to do so, and any dispute between a trader and the company in reference to any service terminal charged to a trader who is not allowed by the Company to perform for himself the service shall be determined by the Board of Trade." That provision is re-enacted in substance in the Fifth Schedule of the Railways Act. I do not think there is any material alteration except one, that any dispute is to be settled by this Court instead of by the Board of Trade. Therefore, it will be seen that a trader, where traffic is conveyed in a separate truck and it is not to be loaded in a shed or building of the company—that is, if it is loaded in the open yard—he has the right to perform his own loading and cover it. That is a right given to him by Statute and preserved to him by the Fifth Schedule. It is in circumstances of that kind and where a trader elects under the right that is given to him to do his own loading and covering, that this Condition is directed. We submit that it is only right that where a trader elects to do his own loading and covering, the company should not be responsible for any damage that happens in transit because the trader has not properly covered or properly loaded his traffic. And you will observe, Sir, that the company only suggests that they should be absolved from liability for such loss upon proof by the company that the damage could not have arisen but for the faulty or improper loading. We submit that that is a perfectly fair and reasonable thing to ask for.

Mr. Jepson: It would not only apply to people who used the railway company's open yard, but I suppose it would also apply to people who do their own loading in their own private sidings?

Mr. Bruce Thomas: Yes, quite so.

Mr. Jepson: Which is the bigger thing.

Mr. Bruce Thomas: Yes. It would apply certainly to all cases where the sender did his own loading. Now, the suggestion is that we should accept all responsibility for improper covering or loading where it is done under the supervision of the company. It will be a question of fact in each case as to who did the loading, and if words are inserted in this Condition as suggested, "and not under the supervision of the company," we apprehend that in almost every case where the loading is done upon premises belonging to the company—namely, in the open yard, it will be said to have been done under the supervision of the company because the company's servants are about; that they, of course, look at the traffic before it is attached to a train; they have the duty to see that it is in a condition to travel safely so far as you can judge from an outward examination. But one can imagine that in almost every case it would be

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asserted that the loading when done in one of the company's yards had been done under the supervision of the company. And why should the company take any responsibility at all in regard to defective or improper sheeting or loading by a trader? The trader does the loading himself and does the sheeting himself, therefore the company get no payment in regard to it. Although the company are not going to be paid for loading and not going to receive anything either for sheeting, it is suggested that the company should take some responsibility that may arise out of the defective or improper loading. Our submission is that those words should not be inserted. The trader, of course, is given an absolute right to do this loading; there is no direction in the Act that he is bound to conform to any orders we give him; he can do it as he likes. We submit that we ought to be absolved altogether from liability when we show that the damage has arisen from the improper loading.

Condition 19 has been deleted. That Condition was "Merchandise that loses weight through drainage, evaporation or any cause beyond the company's control, shall be charged upon the weight (inclusive of packing) of the merchandise when received by the company to whom it is handed by the sender." I understand that that has been dealt with in the Classification Conditions; and, therefore, it is not necessary to deal with it here, because you will see that by Condition 21 the conditions of the General Railway Classification are incorporated. It is Condition 5 of the General Railway Classification Condition.

Condition 20. There is a controversy upon this Condition. The companies seek to obtain a warranty that merchandise is not dangerous and that it is fit to be carried in the ordinary way. Perhaps I had better read it: "In the absence of written notice to the contrary given to the company at the time of delivery, all merchandise is warranted by the seuder and/or owner not to be dangerous and to be fit to be carried or stored in the ordinary way. Any damage resulting from a breach of such warranty shall be borne and paid by the sender and/or owner." At present in the absence of any such condition the position of a common carrier, or any carrier who is under an obligation to receive and carry goods, as a railway company is, although it may not be a common carrier —it is under an obligation to receive and forward goods under Section 2 of the Railway and Canal Traffic Act of 1845—the positiou of such a carrier at common law to-day is this: That the sender warrants that all goods which are handed to such a carrier are not dangerous and are fit to be carried in the ordinary way. If they are not and if damage results then that warranty has been broken and the person who has impliedly so warranted is liable to the railway company to make good to the full extent the damage that has resulted from that breach of warranty. This Condition goes a little further than what a railway company to-day has at common law, in this respect. Although such a warranty as I have mentioned is implied in all cases where goods which are dangerous, but are not so declared to be dangerous to the railway company, are handed to them for carriage, there is no such warranty when the railway company or the carrier can see himself that it is perfectly plain that the goods they are receiving are dangerous. In other words, if a carboy of sulphuric acid were handed to a railway company labelled "Sulphuric Acid—Dangerous," no implied warranty arises in that case because it is perfectly plain that the railway company's servants must know that it is dangerous because it is stated on the package itself to be dangerous. The difficulties are not likely to arise in such a case. Where difficulties may arise is where, for instance, straw in a damp condition is handed to the company for carriage. It is not loaded by the company; in fact, I think it very seldom is loaded by the company. Then we ask for a warranty in that case. We do not want to have it said or for it to be open to a trader to say afterwards, "You saw it was straw; you know very well that straw may be damp, and you know that if straw is damp it may spontaneously combust." We do not think it is reasonable that we ought to be put in that position. If damp straw is handed to us we ask that we should have a warranty that it is not dangerous and that it is fit to be carried in the ordinary way. If spontaneous combustion does set up, then we think that the sender ought to be responsible for the results of that; and that no question thereafter is to arise as to whether or not the company's servants knew or ought to have known that it was in a dangerous condition, because the warranty is to attach in all cases in which the railway company have not received written notice. As I have said, at present in most cases we have a warranty; but differences may arise as to whether or not the railway company's servants at the station ought to have known that the article which was being handed to them as ordinary merchandise was in fact not ordinary merchandise but dangerous merchandise and one from the carriage of which damage is likely to follow.

Mr. Locket: Is there any Condition equivalent to this one at present in operation?

Mr. Bruce Thomas: No.

Mr. Locket: This is a new Condition?

Mr. Bruce Thomas: Yes, this is a new Condition.

Mr. Jepson: But although it is a new Condition you say it is practically provided for under the Act of 1845, at common law?

Mr. Bruce Thomas: No; not under the Act of 1845. It has, I think, long since been settled—I have not the cases with me at the moment because we shall have to go into this matter in some greater detail when we discuss the clause with the opponeuts, and I propose then to go into it somewhat more fully——

Mr. Jepson: Then do not trouble now, Mr. Bruce Thomas.

Mr. Bruce Thomas: Perhaps I might defer it until then.

Mr. Doughty: Might I ask whether this clause refers to goods that are dangerous to other goods and not to goods that are liable themselves to deterioration like perishable goods, and so on. It arises on the words "Stored in the ordinary way." Some goods might rapidly deteriorate through storage and not harm other goods.

Mr. Bruce Thomas: No, it is not intended to deal with the damage that results to the actual goods which are dangerous——

Mr. Doughty: You mean goods that are dangerous goods?

Mr Bruce Thomas: It is not confined to dangerous goods; it also covers non-dangerous goods, but goods which were handed to the company in a condition in which they are not really fit to be carried in the ordinary way. For instance, a cask of treacle. I do not know whether treacle is sent in casks or not, but it may be sent in a defective cask. Through no fault of the railway company—it is subjected to the ordinary incidents of railway carriage—but through being in a defective cask which springs a leak on the way and the contents flow out and spread about the truck and do a considerable amount of damage. That is a case where the railway company is entirely not to blame; the damage arises solely through the treacle having been sent in a cask which is not sufficiently strong for the purpose; and we suggest we ought to be indemnified against that. In fact, we are indemnified to-day. We have that warranty to-day, unless it can be shown that when that cask was handed to us it was perfectly clear that it was a defective cask and, knowing that it was a defective cask, we agreed to carry it in its defective condition.

President: Is it meant to cover such cases as where they handed some damp rags to be carried? They depreciated; they were delayed in transit; nothing would have happened if they had not been damp rags; they would have been as good at the end as they were at the beginning; the railway

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company did not know they were damp rags; the rags depreciated and a heavy claim was brought against the company, but the company were held not liable because the rags were packed in a damp state. Is it meant to cover a case like that?

Mr. Bruce Thomas: Yes, it covers that; and it shuts out the trader in this respect—one has to face this thing; it is no good attempting to hide for a moment what the Condition is intended to meet—in the case that you have put, Sir, it is intended to shut out the trader from being able to allege that the company knew they were damp rags when the rags were handed to them. I am quite frank about it. My friends here know exactly what it is intended to do. It is intended by this Condition to go a step farther than the common law takes us. I must try, of course, to satisfy you that it is fair and reasonable for us to ask you to go that length.

Mr. Doughty: Might I ask my friend to be a little more precise; because a large number of goods consigned by the Association are not fit to be stored, and obviously not fit to be stored for any length of time, but are quite fit to be carried, and they are not dangerous to any other commodities ou a railway, but would themselves be ruined if stored. It would be absurd to give notice in every case that pears, strawberries, and so on, must not be stored. I want to know how he will deal with that class of goods, innocent in themselves but of a perishable nature.

Mr. Bruce Thomas: Of course it is not intended that this Condition should apply to such a case as my friend puts. However, I do not think I will spend any more time on it at the moment as you can see it is open to a good deal of discussion, and I am afraid the Court will have to hear that discussion at some time; if it can be confined to the Court hearing it once only, I am sure they will appreciate it.

Condition 21 incorporates the conditions which are to be found attached to the General Railway Classification which, I think, have been settled. Condition 21 means the incorporation of the existing Conditions and Regulations in the General Railway Classification up to the appointed day, and after the appointed day the new Conditions. I am told that the Manchester Chamber of Commerce object to Condition 21. I do not know whether they are proceeding with that.

Mr. Bradley: We ask for the insertion of a few words at the end—" as approved by the Railway Rates Tribunal."

Mr. Bruce Thomas: The effect of that would be that the General Railway Classification Conditions, which are in operation until the appointed day, would be cut out.

Mr Jepson: That is clearly not what the Manchester Chamber of Commerce intend. You do not understand that, do you, Mr. Bradley—that if these Conditions came into operation before the appointed day, you, amongst other traders, want to incorporate the existing Conditions of the General Railway Classification. By your proposal you would cut those out and would only have the new Conditions as settled by this Tribunal incorporated after the appointed day.

Mr. Bradley: The new Conditions of the General Railway Classification have been fixed, and I understood that the old Conditions would be abolished.

Mr. Jepson: On the appointed day. Is it your suggestion—because this is what your amendment brings you to—that the traders wish not to have the existing Conditions and Regulations of the General Railway Classification embodied up to the appointed day if these Conditions come into operation before the appointed day.

Mr. Bradley: We want these Conditions to replace the existing Conditions and any new Conditions which may be tabulated afterwards to be subject to your approval.

Mr. Jepson: I am afraid you have not dealt with the point I put to you. Your proposal is to add to Condition 21 these words, " as approved by the Railway Rates Tribunal." The effect of that amendment would be that if these Conditions which we are considering now come into operation before the appointed day for standard rates, the existing Conditions of the General Railway Classification which are generally applicable to the traffic up to the appointed day, will not be incorporated.

Mr. Bradley: Oh; we do not want that.

Mr. Jepson: I thought so. Then you withdraw your amendment.

Mr. Bradley: Yes.

Mr. Bruce Thomas: Condition 21 says ". . . the Conditions and Regulations in the General Railway Classification from time to time in force." Of course, on the appointed day another set will come into force. Condition 22 provides, "The company shall not be liable for failure to collect 'Paid-on' charges in any case where, either before or after delivery, the person from whom such charges are to be collected fails to pay after reasonable demands have been made for payment thereof." The companies undertake to make reasonable efforts to collect paid-on charges, but they are not going to be responsible for them, if, after making those reasonable efforts, they cannot collect them. I have a note here that the Aberdeen Chamber of Commerce object to that.

President: Is there any gentleman present from the Aberdeen Chamber of Commerce? (*No one appeared for the Aberdeen Chamber of Commerce.*) Then you might go on to the next Condition, Mr. Bruce Thomas.

Mr. Bruce Thomas: Condition 23 deals with the failure to address merchandise or to label trucks. It is in this form, "The company shall not in any case be liable for loss or damage directly occasioned by the failure of the trader to comply with Conditions 1 and/or 2 hereof." No question arises about that.

Condition 24 preserves certain rights and liabilities: "Subject to these Conditions, the rights and liabilities of the trader and the company respectively, whether at common law or under any Statute, shall remain unaffected." That Condition is agreed.

Condition 25, which is also agreed, says: "These Conditions shall apply by whatever route the merchandise is carried."

Then there is a new Condition which was suggested by the traders and which we quite agree to: "Any special conditions which may from time to time be settled by the Railway Rates Tribunal in relation to the carriage of merchandise of a particular nature or description shall in respect of such merchandise prevail to the extent that such Conditions are in conflict with any of these Conditions." We think it may be in the case of the Wine and Spirit Trades' Association objection that something special may have to be done, and in that case the special Condition will bind them, and not the general one in this set.

Then there is another new Condition called "j": "The term 'packing' when used in these Conditions shall not include a sheet or anything which is necessary for fixing the merchandise securely in or to the truck in which it is carried." That is proposed by the Co-ordinating Committee, and we have to object to it. Putting it shortly, we think that this is, among other things, an attempt to define "packing." However, we shall have to deal with it more fully later.

The last Condition, which is another new Condition and is called "k," says: "When a notice given in compliance with any of these Conditions is sent by post, service thereof shall be deemed to be made by properly addressing, prepaying and posting such notice. And unless the contrary is proved to have been effected at the time at which the notice should be delivered in the ordinary course of post." That concludes the Conditions. I think perhaps I might go back to No. 1 now, which is where the first question arises. There is really nothing that I can say upon it which will be of particular assistance to the Court, and I will call Mr. Pike at once.

MR. JOHN PIKE, sworn.

Examined by MR. TYLOR.

1. Taking the heading first. Will you just point out to the Tribunal in what respects the heading differs from the heading of the Conditions as originally proposed by the railway companies.—The only alteration is that the words "of the rate" at the end are altered to read "at the company's risk rate."

2. I think that alteration was made at the request of the Traders' Co-ordinating Committee, and accepted?—Yes, it was agreed with them.

3. Look at Condition No. 1. It has been suggested by the traders that it should be incumbent upon the company to give a receipt containing the particulars referred to in the Condition. Will you tell us what you have to say on that proposal?—We are afraid that if such a receipt were given it would land us in serious difficulties, because the receipt would have to be given either by the carman who collected the goods from a trader's premises or by the checker when the goods were carted into the station by the sender, or by the agent when the consignment was from a private siding; and the particulars that have to be given upon the consignment note are such that it would be quite impossible in many cases for the people who received the consignment note to certify. For instance, the carman could not see whether the weight stated was correct or not. And, taking a truck that was coming out of a siding, it is sometimes consigned as containing so many bags of potatoes or so many pieces of wood; it is quite impossible, without turning the whole lot out, to say whether those numbers are correct. And frequently with trucks coming out of a siding the truck is never seen by the company's servant who would have to give the receipt, because either it goes away without passing through his station or it has gone before he ever sees the consignment note.

3a. When you refer to "a truck coming out of a siding" you mean a private siding?—Yes, a private siding. We are afraid that if such a receipt were given we should be very seriously prejudiced if afterwards any proceedings had to be taken; because in many cases the mere fact that a receipt had been given would be taken as evidence that we must have received the goods exactly as described in the consignment note, which is a thing we have no chance of checking.

4. Of course the result would be that the company would be in a position of having to prove it had not received them, although quite ignorant of what it had received.—Quite so.

5. Instead of the trader having to prove affirmatively that he had delivered.—Yes.

Cross-examined by MR. ABADY.

6. On behalf of the Co-ordinating Committee I should like to ask you one or two questions. Would the railway company be content with a receipt in such a form as would not necessarily involve the company in being committed to accept the weight of the consignment?—No, because there are other things besides weight. There is number, and there is loss, and other things.

7. Supposing we agree that there probably is not a legal obligation on the part of the company to give a receipt at the present time, would you agree with me that it is the usual practice to give a receipt?—No, I should say it was extremely unusual for the company to give a receipt for goods.

President: Do you mean in railway practice?

8. *Mr. Abady*: Yes. (*To the Witness*): Would you say it is very general that a receipt is given?—I should say it was most unusual for a receipt to be given.

9. Would you say that it is usual that when a railway company delivers goods to a trader the railway company gets a receipt?—Sometimes.

10. Would you say it was pretty general?—No, certainly not.

11. Would you look at this document which I am going to hand to you. I will read the heading of it: "Consignment note. London, Midland & Scottish Railway Company: Midland Division." That is a document with a counterfoil provided for a receipt to be given by the railway company. (*Document handed.*) Will you tell me whether that is an example of a document which provides for a receipt being given?—That does provide for a receipt being given.

12. It does?—Yes.

13. *President*: Is the receipt to be given by the railway company?—Yes.

14. *Mr. Jepson*: What is that? A consignment note?—It is the counterfoil of one of the ordinary consignment notes. (*Document handed to the Tribunal.*)

15. *Mr. Lockett*: Is this a receipt? Is not that merely a counterfoil which remains in the book and which is kept for reference purposes by the railway company?—No; these are books that are given to the traders. The trader makes out the consignment note, and when the carter calls for the goods he signs that he has received the under-mentioned goods. But, of course, this is a case where he can check. There are many more cases where it is quite impossible to check. He is not signing for weight, or for anything except the goods themselves.

16. *President*: Put in one box, or something like that?—Certainly.

17. *Mr. Abady*: Will you look at this document. This is a consignment note from the London & North Western Railway which contains a duplicate which is receipted and retained. Will you say whether that is a usual form? (*Document handed.*)—There is nothing at all in the way of a receipt on this document.

18. I ought to have handed you up the other blank sheet which is arranged for a carbon duplicate to be made at the time. This blank sheet belongs to the form that the Chairman has, and I should have handed it up. A piece of carbon is inserted and the writing on the consignment note comes through and is retained?—That is merely a copy of the consignment note.

19. It contains, of course, the signature of the person who received the goods on behalf of the railway company?—I do not know that it does; there is no provision for it on the form.

20. Look at the form. We do not want to be at cross purposes. Is it not obvious what the purpose of that book is? (*Book handed to witness.*) The carman signs on the consignment note, and there is a carbon used; is not there, in fact, a receipt?—I do not know. That sheet is provided in order that the sender of the goods has a copy of the consignment note; it does not follow that it is signed, and I do not know that it is signed.

21. *Mr. Jepson*: Of course, there is no provision for a counterfoil, and your suggestion is that there is a signature given in some way on the counterfoil. Looking at this consignment note, I should think the top part is filled up by the sender of the goods, and, of course, he gets his counterfoil by means of the carbon. At the bottom of each consignment note you get "Name of Company's drayman bringing traffic in van number so-and-so, unloading checker, loading checker, wagon number"; that is information which is inserted at the station after this consignment note is brought in by the drayman?—That is quite correct.

22. *Mr. Abady*: I am informed, and I will give evidence of it—I do not know how far it may be taken—that in many cases the carman signs on the front, and the signature, of course, goes through on to the counterfoil?—I should not like it to be thought

that these are duplicate entries; these are two separate consignments.

23. *President*: Two forms on one sheet?—Yes.

24. *Mr. Abady*: In the face of the production of this consignment note, for instance, you would agree that a receipt is given in some cases by railway companies?—A receipt is not given as asked for here. What is asked for here is that "The Company shall give a receipt containing the above particulars unless otherwise agreed," and that is not done by this form; and, I might say, that this form is not used for private siding traffic.

25. You understand that the object of requiring a receipt is not to bind you to the particulars, but to get a receipt that you have received some goods; you have received what purports to be the consignment in accordance with the particulars?—Well, that may be the reason, but I do know that attempts have been made to get us to give a receipt with quite other reasons.

26. Supposing a claim is made for goods lost or damaged, would it be true to say that one of the first things a railway company would do would be to ask for the production of the receipt that they had received the goods?—It is not done to-day.

27. You do not think it is?—No.

28. Well, I will give evidence on that. You would not say it is never done?—Certainly no case has come under my notice where anybody has ever been asked to produce the company's receipt for the goods. We might ask them to produce a copy of the consignment note, or give us such particulars as will enable us to find the consignment note.

29. If we can pursue the other side of the matter for a moment, do you still say it is not the usual custom for the railway company to get a receipt in some form or other from the trader when they deliver goods to the trader?—When it is delivered by cart a signature is usually asked for, yes; when it is delivered by truck, no.

30. Then with respect to traffic that passes away from sidings, supposing traffic passes in truck loads, is it not the usual practice for the company to sign what is called a truck book?—No, not that I am aware of. In any case then we merely sign for so many trucks; we do not sign for the contents.

31. But you give a receipt and the contents would be in the consignment note, would not they? You would give a receipt for the trucks—you admit that?—I am not trying to fence with it. All I want to say is that we could not in such circumstances possibly give a receipt that we have received so many tons of traffic, because we do not know.

32. I put it to you that it was not the intention that such a receipt should be asked for?—I am not sure.

33. May I put it this way: do you not think it would be possible to agree some words which would obligate you to give a receipt without putting a burden on you that you do not want to have?—Well, we are rather afraid of the burden.

34. But if that could be avoided do you think it would be a reasonable thing?—Well, I do not see how it could be done without placing a burden upon us which we feel is too onerous to be borne.

35. That is quite intelligible, but it is not quite an answer to what I asked you. Supposing it could be done without placing that burden on you, would you agree that words should be inserted which would obligate you to give a receipt?

Mr. Jepson: Are you going to prove that it is of practical use to have these receipts, or are you going to exploit some grievances, or some difficulties which have arisen because you have not had these receipts?

Mr. Abady: No. As far as I am instructed it would be necessary to insert some such words as the matter has been raised, and the railway companies have objected, in order to continue what in effect is the general practice.

Mr. Jepson: But the evidence is that it is not the general practice.

Mr. Abady: Well, that is Mr. Pike's evidence.

Mr. Jepson: Yes. One can quite imagine the amount of work that would be required if the railway companies had to give a receipt for every consignment handed to them; it would be an enormous job, quite apart from the practicability of it, and one would like to hear what is to be the practical use of it once you get it, or what have been the difficulties that have arisen in the past by reason of not having had it.

Mr. Abady: Very well, Sir. I will bear in mind what you say and deal with the matter when I come to call my evidence.

President: You would be content that where a practice of giving a receipt has been established it should be continued; that is all you want? Where a practice has prevailed you want it to continue; that is what you said, as I understood.

Mr. Abady: I think it goes a little beyond that in view of the attitude of the railway companies. I think the traders were under the impression that there would never be any difficulty in getting a receipt which would not be a warranty on behalf of the railway company that they have received goods to the exact particulars that were set out in the consignment note. Now they have raised that question, and apparently there seems to be some difficulty about their giving a receipt if it is wanted—a mere formal receipt such as is given in many cases now.

President: But when you were putting your question to Mr. Pike you said "All this difficulty could be avoided and a mere receipt given; do not you see your way to give it?" and then afterwards I understood you to say you were afraid the practice of giving a receipt as it exists to-day would be stopped; therefore I thought what you wanted was a continuance of the usual practice of giving a receipt where it is now given.

Mr. Abady: Yes, but the railway companies' attitude now shows that they consider they have a right to refuse to give this formal receipt that they give in many instances to-day, and probably where they do not give receipts it is because they are not asked to give them. *(To the Witness)*: This is a suggestion that I am instructed to put to you: "The company shall give a receipt containing the above particulars unless agreed to without binding the company to the correctness of such particulars"; would you agree if those words were added—"without binding the company to the correctness of such particulars"?

Mr. Jepson: That would simply be a receipt that the railway companies received something.

Mr. Abady: That is right.

Mr. Jepson: That is all that the traders want—a receipt that the companies have received something.

Mr. Abady: That is really what it comes to.

Mr. Jepson: Well, what is the practical use of that?

Mr. Abady: That, of course, does not rest with me.

Mr. Doughty: Might I answer that question? It would be of very great importance to the Federation that I represent, because in many cases delivery to the railway company at Covent Garden is delivery to the purchaser, and if we can prove delivery to the railway company we are entitled to be paid for the goods. Goods are sometimes lost after they leave the market and they are never delivered at all; it is a question whether our carman or the railway company have lost them; therefore a receipt merely signifying that something had been delivered would be very valuable.

President: You mean to say the goods vanish?

Mr. Doughty: The goods vanish, and there is no trace of them at all.

Mr. Jepson: You can give us one or two cases like that, I have no doubt.

Mr. Doughty: I hope to be able to do so.

Witness: One cannot help remembering what one's past experience has been, and I know repeatedly attempts have been made to get us to give receipts for traffic loaded by somebody else than ourselves; by a dock company, for instance. We have been asked to give a receipt, and there are 4,294, or whatever the number may be, small pieces of wood in a truck, solely with the object of making us deliver 4,294

blocks of wood, a thing we cannot possibly check. Repeated attempts have been made to get us to do that sort of thing, and we can only assume that this is another attempt.

36. *Mr. Abady*: Of course, that is not what was intended; I hope I have made that clear?—But it might be used in that way, especially as the proposal was framed.

37. If there is no receipt it might be difficult for a trader to prove that you have ever had any goods at all?—We would not mind admitting that we had a truck.

Cross-examined by Mr. CLEMENTS.

40. Do you object to giving any receipt at all of any kind or do you only object to the receipt being given in the form suggested here?—We do object very strongly to the receipt being given in the form which is suggested here, or any other similar form that would bind us to things that we cannot possibly check.

41. But you do not object to giving a receipt?—Where we can reasonably do so, no.

42. I think you said one of the objections to giving the receipt in that form was that it might make you responsible for weight and quantity, and so forth?—I do not say it would make us responsible, but it would be used in an attempt to make us responsible.

43. Yes; perhaps I put it a little too high. The same thing applies, does it not, in the other case; where you deliver goods to the trader you take his receipt; you require him to sign?—We require him to sign when the goods are delivered by cart, and, of course, it is a thing he can check.

44. You require him in point of fact to take the responsibility which you think you ought not to take?—No. In similar cases we should not object to giving him a receipt.

Cross-examined by Mr. DOUGHTY.

50. There would be no objection to your carmen or your checkers at the station counting packages, for instance, when they are delivered into your possession?—Well, it depends on the amount of work.

51. I know, but there comes a time, does there not, when the packages are transferred from the consignor to the Company either to a carter or at the station to the checker; they must be counted by somebody at the time?—I should be very sorry to rely on the count that was made at the time when it is a number of very small things.

52. It is very easy, is it not, with parcels of fruit for one or two to disappear in the course of transit?—Oh, yes.

53. A receipt would be of very great assistance as to finding out where the leakage occurred, would it not—whether it occurred in the carting to the station, or supposing the consignor delivers to the station whether it occurred upon the railway?—Yes.

54. Where it is practically possible. I quite appreciate that you cannot count thousands of small things. The companies would have no objection to adopting a system of that kind?—A system of giving receipts?

55. Where it is practicable?—A system of what kind, might I ask—receipts?

56. An acknowledgment that they had received so many sacks of potatoes, or so many parcels of whatever it may be?—Quite, where it is reasonably possible for them to count, but I do rather object to potatoes, because potatoes are usually loaded by the sender into a truck, and without emptying that truck again we do not know how many sacks he has put in.

57. Of course, if you receive a whole truck you say simply: "Received a truck"?—Yes.

(The Witness withdrew.)

Mr. Abady: If I may intervene for a moment, I do not know what the procedure is going to be; I should like to call evidence on this, and I should like to make one or two observations, and I dare say my friends would. I do not know what course would be convenient.

38. Or a consignment, without binding yourself to the particulars of the consignment?—Yes, but I should be very chary of giving any receipt at all, because I am aware from past procedure of the sort of use that would be made of such a receipt.

39. But if the receipt was in that limited form expressly limiting you, would not that get over the difficulty?—I should like to consider that with my advisers before expressing any opinion.

Mr. Abady: That is as far as I think I can ask you to go.

45. Perhaps you will enlighten me as to exactly what you mean by "similar cases"?—In the case of this form which Mr. Abady put to me, the carman does sign that he has received so many articles which he has collected by his cart, and in the same way when the carman takes out goods for delivery we ask the recipient to sign that he has received those goods; but we do not ask a man to sign for anything in a truck when it goes into a private siding; he gets the truck, and similarly we get the truck.

46. That goes to the form in which the receipt is asked for. If you give a receipt to a trader who hands you a consignment that at least is proof that a consignment was handed to you, is it not?—Yes.

47. And to that extent I should think it would be very useful?—Well, it might be; I do not know.

48. Might not the fact that such evidence existed tend to diminish disputes?—No, I do not think so. I really cannot recollect any cases where the railway company has stated without good reason that it never received the goods.

49. You will not go as far as that?—I do not think they have.

58. You cannot empty the truck and count the sacks; that would be quite unreasonable?—Well, it is the truck that is the principal difficulty.

59. Are you at all familiar with Bills of Lading as given by ships. I suppose you must have seen a great many in your life?—Yes.

60. They frequently put "Weight and contents unknown" in their receipts, do they not?—Quite, and traders frequently put it upon the receipts they give to us.

61. Some such system as adopted by ships in the Bills of Lading would be workable with the railway companies, would it not?—No, because we have not the same opportunity or the same time in which to check things that a ship has. The work in a goods station in the busy times, in the evening, for instance, is terribly rushed, and it is very difficult indeed without delaying the traffic to make these meticulous counts and tests.

62. Then your difficulty is one which is rather a practical difficulty than one of principle?—Yes—well, it is both. There is the practical difficulty, and there is rather the point of principle when it comes to trucklonds.

63. Then your principle applies to trucklonds, with which I agree to a very great extent. You rather suggested to my friend, but I hope not to my clients, that sometimes it might be made some engine of mistake or even fraud against the railway companies?—I am not speaking from what might happen; I am speaking from what I know has happened.

64. The railway companies are able to protect themselves against that kind of thing, are they not?—I am not so sure.

President: I think the most convenient course would be to take each one by itself.

Mr. Bruce Thomas: That occurs to us as the most convenient course.

President: Very well, call your evidence.

Mr. William Oldham: Sworn.

Examined by Mr. Abady.

65. Are you a member of the Institute of Transport?—Yes.

66. Are you Traffic Manager for a large firm of manufacturers?—Yes.

67. Are you Vice-President and member of the Council of the Mansion House Association on Railway and Canal Traffic?—Yes.

68. Are you a member of the Transport Committee of the Federation of British Industries?—Yes.

69. And are you a member of the Traders' Co-ordinating Committee?—Yes.

70. I believe you have attended a great many meetings?—Yes.

71. And conducted negotiations?—Quite correct.

72. Or rather helped to conduct negotiations. Of course, they have been without prejudice?—Quite so.

73. I wanted you to try and help the Court if you could with respect, first of all, to the general practice as to receipts. Take the question of railway stations: when goods are delivered by the trader to a railway station, what happens with respect to any acknowledgment by the railway company that they have received the goods?—Invariably they give receipts.

74. In what form?—Signatures in the form of duplicate consignment notes handed in by the trader. True they often clause that signature by a clause "Weight and contents unknown," Many traders use their own consignment notes; other traders use the railway companies' consignment notes. I should say invariably when the trader takes his goods into a railway station he gets a signature from the man who takes the goods from him.

75. If he does not present the consignment note, would he have a book with him?—Yes.

76. When goods are collected have you any experience as to what happens?—Yes, I have a very big experience. When goods are collected by the railway company invariably, again generally speaking, they will sign for the packages that they are taking away from the firm's premises. They will do that on a copy consignment note by means of a counterfoil, or on a trader's own copy of his own consignment note book.

77. With respect to sidings, have you any experience of the delivery of goods from sidings to railway companies?—Yes, I have many, and other firms that I know of, people that we have had in connection with our various organisations, and at many sidings the railway companies do give signatures sometmes for packages that they take away, for the number of packages, and at other times they give a signature for the truck "weight and contents unknown."

78. Do you know what happens when there is a train load? Is there any difference in the practice there?—The train load is governed by consignment notes, and the railway companies clause the consignment notes in the way that I have already alluded to.

79. Have you any experience of making claims on railway companies for loss or damage of goods?—Yes.

80. What happens then? Supposing you make a claim, what would the railway company as a rule do?—The procedure as a rule for expediting the payment of claims, or looking into and enquiring into the claims, is greatly facilitated if you are in a position to show on the claim that you make, the signature of the party who either took the wagon from your sidings, or who took the goods from your warehouse. It has been our practice, and my practice always in making a claim, to give the signature of the party who takes it away; it helps the railway company and facilitates searching the records.

81. I understand you to be stating now a reason why a receipt is desirable?—Yes.

82. What I was asking you was, does a railway company at the present time in the case of a claim ask for a receipt?—I do not know that they actually ask for the receipt because they know in our case it is the practice to quote it, and I believe that is so with firms generally; but there are firms that I know of, and I have heard of through our Association, where they have asked to produce the signature and the receipt that the railway companies have given to them.

83. Have you any experience of what happens when railway companies deliver goods to a trader? Take the case first where the goods are delivered to the station and the trader collects them from the station; do the railway companies ask for a receipt from the trader before he can take the goods?—They do.

84. Always? I should think so.

85. Do you know of any cases where they do not?—I do not.

86. When the railway company delivers by cart, do they get a receipt then from the trader?—Yes.

87. When they deliver trucks to a siding do you know what happens?—Sidings are governed in each case by the circumstances relative to their agreements and arrangements with the stations, but at many sidings they get signatures from the traders, and they also ask the traders to sign wagon books. If they do not sign for the specific packages they ask for a signature for the wagon going into their sidings.

88. In your view, would it be a convenience both to the railway companies and to the traders if a receipt were given by the railway company?—Undoubtedly.

89. Would you expect that the railway companies could be bound to the correctness of the particulars by giving the receipt?—No. I think the trader would not press that they should be bound by the actual weight and the contents of the packages; in fact, they guard against that themselves, and they actually put a clause on "weight and contents unknown," but sign for the specific number they take away. In the case of sidings, in many cases now checkers are at sidings to supervise and work in conjunction with the people who have the private sidings. They attend to the loading, they see the loading going on, and they give signatures for the specific number of packages. If, on the other hand, it is a question where checkers do not attend, and they take the trucks out they give signatures for the trucks.

90. *Mr. Lockett:* In the case of wagons delivered at sidings whether private sidings or sidings belonging to the railway companies, and the trader signs a wagon book, in case of any question arising as to whether that wagon has been received or not, is it invariably the custom that the wagon book is taken as conclusive evidence?—That is correct.

91. To all intents and purposes it is a receipt?—It is.

Cross-examined by Mr. Bruce Thomas.

92. The receipt for wagons is just a receipt, is it not, for "wagon number so-and-so"?—"Containing so-and-so according to invoice."

93. Do you suggest that is the common practice? I am informed that that is rare? Generally the advice going into the siding owner will show the contents of the wagon apart from the wagon number. If it does not, of course the wagon owner will sign for the wagon and the number as you say.

94. The advice is one thing, but the signature that I understand he gives in the wagon book is only a signature relating to a wagon of a certain number; that is the only signature he gives?—According to the ruling of the book. Sometimes the ruling of the book, I believe, provides for other information, and it is filled in.

95. I put it to you that it is a very exceptional thing indeed that there is anything in the book relat-

ing to the contents of the wagon; there may be something to the effect that it is coal?—That is correct.

96. So that all the railway companies have in their possession is the private siding owner's signature that on a certain date wagon number so-and-so went into his siding?—Yes.

97. What is your firm—the Vacuum Oil Company?—Yes.

98. Is this system of a carbon the sort of practice that is followed by your firm?—Not on those consignment notes you have in your hand. It is the system of a carbon, it is true, but on other consignment notes.

99. I do not say that the printing on the face is the same, but this is the system?—That is so.

100. What signature do you get from the company?—The signature of the man who takes the goods away.

101. Would he be a drayman—I suppose he would sometimes?—Yes, in many cases.

102. Have you got a copy of the consignment notes that you use?—Yes.

103. Might I just look at it?—Certainly. (*Document handed to Counsel.*) That is a copy of our own consignment note whereby we make out notes and instructions to warehouse all combined.

104. *President*: Have you brought any of the company's receipts with you to-day?—Yes, I have; they are here, signed; they would probably do better. (*Documents handed Chairman and Counsel.*)

105. *Mr. Bruce Thomas*: I see. What you want to put the company under obligation to do is to give a receipt that packages are handed to the railway company in good condition?—That is right.

106. I have one here signed by a Mr. Cooper, and the traffic on the receipt I have got is "One barrel of gargoyle D.T.E. oil extra heavy, gross weight 432 lbs." is it?—Yes.

107. The drayman comes to your works and a barrel weighing 432 lbs. is put on his van?—That is so.

108. And he drives away?—After he has signed for it.

109. Do you weigh it up in front of him?—No.

110. You do not weigh it, but yet you make him sign that he has received a barrel containing 432 lbs. of oil in good condition?—According to the declaration on the consignment note, which is correct.

111. If it does not contain 432 lbs. of oil when it gets to the other end, of course the railway company would have to pay for the deficiency, would not they?—They may.

112. When would not they?—Sometimes it is challenged as to the deficiency, what was the cause of the deficiency, where it took place, and so forth. Our declaration is a *bona fide* declaration. The barrel is weighed a few moments practically before we put it on the van.

113. But do you not see the position you seek to put the railway company in? Taking this particular case, you put a drum of oil on to the railway drayman's van; you do not weigh it before him and he cannot weigh it there; you make him sign a document that he has received a drum containing 432 lbs. Are you aware that in those circumstances in a court of law if this document is produced you are entirely discharged from having to prove that you handed 432 lbs. of oil to the railway company; that this document is good enough for you?—I should think so.

114. That is the position you seek to put the railway company in?—I do not think it is an unfair position.

115. Very well; you think it is fair?—We are obliged by Statute to declare the contents of the packages; we are obliged to declare the description of the packages and the correct weight of the packages; we do that, and we ask the carman to sign for so many packages in good condition. I do not think there is anything unfair in that at all.

116. Of course, if when this got to the consignee he found it did not contain "Gargoyle D.T.E.," but contained something else, then the assumption is that the railway company have taken that out and put something else in in transit—or somebody else has?—I would not like to say that. I have never had such a case as that happen.

117. Has the railway carman any opportunity of checking before you make him give this signature as to whether or not this barrel does contain Gargoyle D.T.E. oil?—Certainly, if he waits long enough.

118. How long would it be necessary for him to wait to ascertain whether it did contain this particular oil?—I suppose in a case like that he would have to get a qualified chemist along with him, and I do not know how long he would have to wait.

119. I mean it would take a day or two, would it not?—It might. My contention is that that is a correct declaration which we are bound to give by Statute, and if we did not give those particulars you would not be able to convey the traffic, or invoice it, or do anything with it.

120. Very well, that is the case you put forward; that in those circumstances it is right that the railway company should commit themselves to an acknowledgement in writing that they have recived oil of this weight and quality?—I think so. They would have an opportunity of re-weighing it when it gets to the station.

121. And of waiting a few days to get their own chemist?—Certainly.

122. *Mr. Jepson*: Have you had any cases under these consignment notes where a claim has been made on the railway company of short weight being delivered where this receipt has been put in as good evidence that the railway company had received the full weight?—Not that I am aware of.

123. Your Vacuum Oil Company has been in existence a good many years?—Yes.

124. It is going strong at Birkenhead still, I suppose?—It is.

125. And you have never had an experience of that kind?—No. What we get is damage, and in a case of damage it is pretty obvious that something has happened to the package. In that case we always get ahead with our claims, but it does help us considerably, as I say, in a large firm like ours, and this must be repeated all over the country everywhere if we can get all our data together at first hand and give the railway companies the information in the first instance; it is a great facility to us both.

126. Of course, this was stuff taken away by cart, I understand?—Yes.

127. What do you do as regards sidings? You send this stuff out in tank wagons, or in wagons loaded with drums, I suppose; what sort of receipt do you get there?—In respect of tank wagons they sign for the tank with a clause signature "Weights and contents unknown," although we say they do know the contents, and do know the weight, because we declare the traffic correctly.

128. They simply give you a signature for a tank wagon of a certain number?—Yes.

129. Or, in the case of drums, they give you a receipt for a truck containing 16 or 18 drums?—Whatever it may be.

130. Without signing for a particular weight?—Without signing for a particular weight; that is quite correct. That is what we ask; that is all we really need. We are obligated to give the packages in good condition, and I think the major portion of the traders would only ask for the number of packages to be stated. The railway company have their protection as you know by the Act of 1845, and we think that covers them. We are just asking here to make an existing practice statutory as we discussed this morning under New Condition (g).

Re-examined by MR. ABADY.

131. With respect to this goods receipt, this, of course, is a receipt which is signed by the railway company by agreement with you?—Yes.

132. And the Condition provides for the continuation of that if you so agree?—Yes.

133. It is not to sign for the contents and the weight, or the quality, or anything of that kind, that we are asking for as a general rule?—No, and I think you will find if you look at that receipt that it is worded that packages are received in good condition, and invariably the carman, or the man of the railway company, when he signs will put in a circle "2," "3" or "4," which indicates the number of packages he has signed for without committing himself.

(*The Witness withdrew.*)

Mr. Abady: I do not want to take up too much time. I am going to call a witness, and I will just tell you the object; he will give his experience in his own trade on the question of the giving of receipts.

MR. JAMES JOHN HUGHES, sworn.

Examined by MR. ABADY.

134. You are the Traffic Manager of Peek, Frean and Company, I think?—Yes.

135. You are a member of the Association of British Chambers of Commerce?—I am.

136. And of the Transport Committee of the Federation of British Industries?—Yes.

137. You are a member of the Traders' Co-ordinating Committee?—Yes.

138. And I think you were a member of the Committee appointed by the Ministry of Transport on Road Traffic?—Yes.

139. You have a considerable experience in transport matters?—Yes.

140. Will you help the Court by telling them what the general practice in your experience is with respect to signatures for goods given to the railway companies?—In my experience we use the unit system of consignment notes. If 50 or 60 packages are sent on one load we send it then a blue note giving particulars say to the Great Western Railway Campany, of notes 1 to 50, 85 packages, and the railway company sign for those 85 packages, and that is taken as evidence in itself that they have received the 85 packages enumerated on the consignment notes 1 to 50. It gives the consignees name and address, and the cases, or boxes, of biscuits. Then the practice is, and it always has been the practice, if there is one package short by any chance, if the package has been left over on the loading, for the railway checker then to state on the blue receipt note "One case for Jones of Merthyr, or Thomas of Bristol, short received; 84 packages received," and then to sign his name. It is very necessary for us to have some check that we are really clear in the despatch of those packages by such a receipt.

141. *President*: I wish you would explain it a little further to me. You have one sort of document to which others are attached giving details; have you a copy of it?—No, I am sorry I have not. The whole point is that we have a system of typing on documents. Each consignment is accompanied by a separate consignment note as we have been requested to give by certain railway companies. They prefer the unit system of notes, because they can then invoice the goods from the particular consignment note for the particular package. The London and North Western for many years have advocated the unit system of consignment note in preference to traders giving their own notes where they have 20 or 30 entries on a note for goods to be sent all over the country. The consignment note corresponds to the particular package. Sometimes the consigument note will show three cases, sometimes two, sometimes one, and so on. The total of that load may come to, as I said just now, 85 packages, and then we have a small receipt note of our own on which we say "Goods as per consignment notes 1 to 50, 85 cases, three boxes and four packages," and the railway checker checks the goods off the load with this unit system of consignment notes and gives us a receipt.

142. *Mr. Abady*: What you mean by the "unit system" is that each consignment note contains a single entry of goods to one consignee?—That is right.

143. Each of those is numbered; you count up the total number of packages, and enter those on another receipt form in which the numbers of the packages and the numbers of the consignment notes are entered?—That is right.

144. And you have a duplicate of each unit note, and therefore you can identify the contents of the package?—Quite.

Mr. Jepson: In that case the company do not give any signatures for weight; it is a certain number of packages. Although the consignment notes, which are summarised on this thing the railway companies sign, would give the weight for each destination or for each consignee, yet on the document the railway companies sign it is 85 packages, boxes or cases, whatever it might be.

President: And nothing about contents at all.

145. *Mr. Abady*: As a member of the Co-ordinating Committee is a receipt which would put the same responsibility on the railway company as they come under your unit system the kind of receipt which the Co-ordinating Committee want under this condition?—Yes.

146. Then with respect to the use which is made of these receipts, do you find them of practical use in the practical working of your relations with the railway companies with regard to claims, and so forth?—Oh yes.

147. Could you give the Court any further details ou that; will you explain why that is?—Yes. I think I am correct in sayiug that in my experience of the last 19 years there have been many, many instances where the railway companies have disputed the receipt of a package when a claim has been made, and we have beeu able to prove the delivery of that case by turning up the duplicates of those consignment notes, and the particular receipt for that particular load.

148. Do you ever seek to put the receipt to any further use than this: evidence of the receipt of a package as package as distinguished from evidence of the receipt of a package containing such and such details?—Only as a package. If we had to prove the contents of a package we should use something else altogether.

149. And you do something else?—We do.

150. You heard what Mr. Oldham said about a receipt being required by the railway companies when they delivered goods?—Yes.

151. Do you corroborate that?—I do.

152. Or have you anything to qualify it with?—No It is the invariable practice of the railway company when delivering goods at our factories to require a receipt for the goods they deliver.

Cross-examined by MR. BRUCE THOMAS.

153. Do you find that when traders want railway companies to do something that will facilitate their convenience you generally are able to come to an arrangement and get it done?—Quite.

154. And this arrangement that you have made with them for giving you a signature that they have received the consignments which are referred to on the various consignment notes that are sent with

each consignment is a matter that has been done by arrangement with the railway companies?—Yes. I think really when we have discussed this there was not any question previously that we were going to get a receipt, but it was the fact that we rather gathered the railway companies were intending to discontinue this system of receipts that made us rather anxious and come forward in this way. We were rather afraid that we were going to be precluded from getting receipts.

155. There has been no difficulty in the past in your getting everything that you required in this respect from the railway company?—In regard to receipts?

156. I am limiting it just to receipts?—No.

157. I do not say other things—reduced rates and so forth. With regard to receipts you have had no difficulty in getting what you required?—None whatever.

158. You realise, I am sure, that in dealing with a large firm of the standing of Messrs. Peek Frean & Co., it is not very difficult to carry out the practice that you have adopted?—I do, yes.

159. And you would appreciate this also, would you not, that if an obligation is to be placed upon the company to give a receipt for all traffic, it might have very serious consequences?—No, I do not.

160. You do not appreciate that?—No.

161. If the company receives a consignment of hundreds of small packages you would not expect them to sign for all those packages unless they had an opportunity of counting them?—I suppose it would depend largely on circumstances. If it was in a station it is my experience that they do count them.

162. It is your experience that all those numerous small packages are counted?—Yes. If they have not been counted the receipt is given for them without counting.

163. Do you think it reasonable to ask the company to bind themselves as having received a certain quantity unless it is reasonably practicable for them to count them?—I do not quite understand that it is not reasonably practicable to ask them to count them.

164. Take the fruit season at a place like Evesham; the traffic has to be sent off within a very short space time, has it not?—Yes.

165. And I suppose there must be thousands of packages sent off within an hour or two every night?—Yes.

166. Would you think that the traffic ought to be held back if there is so much that it cannot be counted?—It is rather difficult for me to answer that, because I have had no experience at Evesham with the fruit traffic; I would rather you asked that from someone experienced in the fruit trade.

167. If there are so many packages, as I suggest, to be dealt with within a very short space of time, you would not think it right for the railway company to hold the traffic back merely because there was not sufficient time to count it; that would not be a reasonable thing for them to do?—I do not understand the difficulty, because I have watched the loading of traffic in the Channel Islands, and I suppose there are more packages of fruit and barrels of potatoes loaded on to the steamers in the Channel Islands to come here than there would probably be at Evesham. They do not seem to have any difficulty about counting them there.

168. You do not suggest that the loading of a steamship at its port of origin is quite the same as loading up traffic by rail, do you?—I do not see any difference between loading the packages on to the steamer in the Channel Islands and loading packages of fruit and vegetables at Evesham out of the vans into the railway trucks.

169. The whole of the consignment goes straight in the ship in the Channel, does it not?—Yes.

170. Here you get a consignment from one consignor going in possibly 20 different wagons, or five different wagons on different trains?—On different trains at Evesham?

171. Well, I do not say Evesham. Take Wisbech or any of those places?—I do not know.

172. You have watched this work being done at the Channel Islands, you say?—Yes.

173. Does the fruit come down there all of a rush or is it steadily coming in all day?—I have watched it in the evening. There has been a string of vans about a mile long.

174. Coming down?—Standing still with the ship alongside.

175. And the ship has been there how long?—I do not know how long it has been there.

176. You have just arrived in the evening and seen that?—No, I was staying there, and made it my business to walk down in the evening and look at it.

177. I meant, arrived at the ship's side in the evening?—I suppose it has been arriving during the day, and it is gradually shifted off and the vans are gradually coming along and being unloaded, and going away again.

178. As you told me, you have had no difficulty in the past; what made you fear that the railway companies were going to alter their practice with certain firms?—Well, I do not know if I am quite justified in saying this——

179. Do not say it if you feel you are not justified?—But you have asked me the question, you see, and I must answer your question to the best of my ability, and my answer is to this effect, that in negotiating with the railway companies I was rather alarmed that the railway companies would not agree to give a receipt. Of course, we are bound under the new statutory condition to give all the particulars, whether we have done it in the past or not. Some firms, I think, do not give the weight; they have left it to the railway companies to weigh. Here we are absolutely compelled to give the weight, and if we are compelled to give it it is not asking much for the practice to be continued of giving the receipts. There seems to be an objection on the part of the railway companies to give us these receipts, and I was rather surprised to-day to hear Mr. Pike emphasise the objection as being one of the contents rather than of the consignment. We do not want a receipt binding the railway companies down to the actual consignment of 151 lbs. of biscuits in a case, or 48 lbs. of jam in bottles in a case, as long as we get a receipt for three cases of jam, and we can prove the contents by other means. That is what rather alarmed us—that there was this big objection to giving a receipt.

180. What sort of receipt would you suggest which would have general application, and was fair in meeting pretty well all cases?—Simply the number of packages and the contents according to the nature of the business of the firm sending the goods.

181. (President): Would it not be sufficient to have the number of the packages with "contents unknown-"?—In my own particular case it is known to everyone that we should not send anything else but biscuits; they are biscuit cases.

182. I quite see that yours is an exceptional business.—In the case of Mr. Oldham it would be obvious that it was oil, and if it was the case of Mr. Major or Mr. Bradnum it would be fruit or vegetables.

183. I do not gather that the railway companies find so much difficulty with the big people who are used to a definite system as with any small parcel that might be handed to them, where they would have to pledge themselves to the contents?—I think it would be sufficient for the small traders to get a receipt for their goods for so many packages, but you see they are compelled under Statute to declare the contents of those packages, and there is a provision for wrongful declaration, and they are liable to prosecution if they wilfully misdeclare their goods; therefore it is not asking too much of the railway companies to sign for those goods if they get a *bona fide* declaration of the goods under the Statute.

184. (*Mr. Bruce Thomas*): How are you going to deal with the case of, say, tinplates coming out of

a works. If a wagon load of tinplates in boxes comes out sheeted or in a covered wagon, what sort receipt would you expect the railway company to give?—I think if I were the trader dealing with that wagonload of tinplates and I had not an opportunity of getting the goods checked, I should be satisfied with a receipt for a truckload of tinplates.

185. A truckload of tinplates, I understand, weighs nine tons?—Yes.

186. And nine tons of tinplates consists of 180 boxes?—Yes.

So you would ask them to give a receipt for a truckload of tinplates, which is well known to be nine tons, and 180 boxes.

Mr. Jepson: Might not a truckload very well vary according to the size of the truck: you may have seven tons, eight tons, or nine tons.

188. *Mr. Bruce Thomas*: Very well; if it varies we are to give a receipt that the particular truck we have received was full of tinplates; that is the point you make?—It is very easy for the checker to jump up and have a look under the sheet.

Mr. Locket: The truck is not necessarily full; it might be partly loaded and containing tinplates.

189. *Mr. Bruce Thomas*: Supposing there was a truck half-full—4½ tons, that would be roughly—he would have to see that there were 90 boxes of tinplates?—Yes. It is my experience that the railway companies are very careful to see what they are getting, and what they sign for. I think it would be quite sufficient in that case for the trader to get a signature for a half-truck of tinplates or a truck of tinplates. I do not think there would be any difficulty really. The difficulty we see is in getting a receipt for our goods.

190. You have experienced no difficulty in that?—I am not speaking for myself altogether.

191. *Mr. Locket*: You are able to take of yourself?—I think so.

192. *Mr. Bruce Thomas*: As you are speaking for others, can you give me any practical illustrations of difficulties that have arisen?—No. I said just now that the past practice has been quite satisfactory. What we were alarmed about was that the past practice was not to be continued, and that has been rather amplified here by the fact that Mr. Pike seemed rather averse to giving receipts.

193. Are you not asking for a great deal more than the existing practice?—Yes; I think you are too.

194. How?—By making it statutory that all these particulars must be shown on the consignment note.

195. Which are you referring to?—Under Condition 2: "the names and addresses of the sender and the consignee, the station or place of destination, such particulars as the company may reasonably require of the net weight inclusive of packing."

196. One moment. Surely all that is provided for by Section 98 of the Railways Clauses Act; it has been statutory for 70 years?—It has not been carried out, and it has not been part and parcel of the general requirements of the companies.

197. The obligation has been there for 70 years or 80 years, has it not?—Yes, but it has not been insisted upon.

198. I put to you the question as to whether or not you were asking for a good deal more than the existing practice provided for, and your answer to that was not an answer, if I may say so; you said that we were asking for more. Is it not correct that you are now asking for a good deal more than the existing practice?—Yes.

199. Do you want more than the existing practice?—Personally, no.

200. We have heard that it is a common thing to get these carbon copies of consignment notes?—Yes.

201. Have you looked at one of these?—I think I know what they are.

202. I understand it is the practice when the carman comes to collect that he should write his name on it?—Yes.

203. There is a space for "Name of Company's drayman bringing traffic in"?—Yes.

204. That is not in any sense a receipt for traffic, is it; it merely provides you with the name of the carman who was requested to receive the goods?—Oh, I think we should always take that as a receipt for the goods if the company's carman signed for them. The railway companies, I think, have admitted that generally, only now they say in another matter that they will not recognise a remark on a delivery sheet as being due notice of some damage or pilferage in the case of a consignment when delivered in bad condition, and notice must be given in writing. I think in the past that has been generally recognised as a receipt of the goods by the company's carman. You may not have thought so, but I think it has been generally understood to be so.

205. A statement contained in a consignment note of this kind, that several hundred articles possibly were handed to a carman and the carman has put his name on the consignment note, you would look upon as an acknowledgment that that number of articles had been handed to the company?—Do you mean when one of the railway company's carmen is collecting the goods from a manufacturer's factory.

206. Yes?—Well, the practice is for the sender's people to load those on to the railway van and the carman would easily stand there and count them on to the van. It is quite a simple thing; really it is.

207. Suppose there are two vanloads going to one consignee, would there be one or two consignment notes?—One consignment note and two carmen.

208. And which carman would be given the consignment note?—I do not think it matters.

209. And possibly one would be loaded at 10 in the morning and the other about 12?—Not under the new condition, I think.

210. You say: "Not under the new condition," but it is not that a common practice? Does it not frequently happen anyhow that the vans are not loaded contemporaneously?—I think in that case they would get two consignment notes.

Re-examined by Mr. Abady.

211. Mr. Bruce Thomas put it to you that you had no difficulty in getting what you required. You were speaking of your firm personally?—I was.

212. Of course, the Co-ordinating Committee represent, do they not, small traders?—Yes.

213. And there might not be the great facility of the railway company to make an agreement with the small traders?—Possibly not.

214. With respect to one answer you gave, which rather astonished me, Mr. Bruce Thomas asked you whether you were asking for more than the present practice, and you said Yes. My instructions were, and I understood the case I was putting forward was, that we were only asking for something which would be a continuance of the present practice.

Mr. Bruce Thomas: That is why you were astonished.

Mr. Abady: Would you tell me how the phrase that is in Condition 1 as modified to-day does anything more than continue the existing practice?

Mr. Bruce Thomas: Why should you cross-examine your own Witness?

Mr. Abady: I am not cross-examining.

215. *Mr. Bruce Thomas*: Oh, all right?—My answer to that is, that if this receipt in accordance with the above particulars was to be insisted upon now, so far as I am concerned it would be more than I have been having in the past; that is what I had in mind.

216. *President*: That is what I thought.—It was a little more than I have been getting, because I simply get an aggregate receipt for the bulk in the load which is detailed on the unit system; that is what I had in mind.

217. *Mr. Pepson*: And as a matter of fact, the railway company do not weigh all your packages, do they?—No.

218. And according to your proposition here you are asking on behalf of the Co-ordinating Committee that they should give a receipt for weights?—Yes.

219. Although they do not weigh them?—No.

Mr. Abady: without binding the company to the correctness of the weight.

Mr. Jepson: Yes, I know.

220. *Mr. Locket*: Your colleagues would be satisfied, I suppose, if you got a receipt containing particulars of the number of the packages and the nature of the contents?—Well, I would not like to answer for the whole of the traders, but I should imagine we should be satisfied with that kind of receipt. I should be personally quite satisfied, but I would not like to say Yes definitely, and then go out and find that I should be bully-ragged by the rest of them.

(*The Witness withdrew.*)

Mr. Abady: I am asked to suggest that the Conditions in the form in which they are in this blue book might appear on the shorthand note; I am told it would be a convenience.

President: If it really will be a great convenience, but I am obliged to keep some sort of check on the expense. If you gentlemen have got all these Conditions I do not know that there is very much use in reproducing them on the note.

Mr. Abady: I understand there are a great many constituent members who do not get these conditions, but who will get the note.

President: I hope the very great number of constituent members then will buy the proceedings, and therefore try to minimise the loss.

Mr. Bruce Thomas: Before you decide, Sir, whether they should go on the notes or not, I ought to state that we have the type set up and if more copies were required we could have them struck off, and they could be sold at some suitable price; it would probably be cheaper than setting up the type again anyhow.

President: That is my impression. I do not know if they could give you a firm order, or if they have any idea of the number they require.

Mr. Abady: I have not, Sir.

President: I shall not have them printed at present; that I can tell you.

(*Adjourned to to-morrow morning at* 11 *o'clock.*)